THE ETHICS OF URBAN WARFARE

CITY AND WAR

DRAGAN STANAR,
KRISTINA TONN

International Studies on Military Ethics

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The Ethics of Urban Warfare

City and War

Edited by

Dragan Stanar and Kristina Tonn

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Cover illustration: 5 April 2022. Burned buildings marked with bullet holes and shrapnel fragments show evidence of a brutal battle in Borodyanka, a small urban settlement in Kyiv Oblast. Russia invaded Ukraine on 24 February 2022, triggering the largest military attack in Europe since World War II. (Photo by Laurel Chor / SOPA Images/Sipa USA).

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Foreword

Urban Operations, Better Be Prepared

Urban operations (UOs) are operations across the range of military operations planned and conducted on, or against objectives within a topographical complex and its adjacent natural terrain, where man-made construction or the density of population is the dominant feature (ATP-99 – Urban Tactics, 2017).

Violence by state and non-state actors is increasingly more urban than rural. And the military is increasingly involved in assisting police forces or operating independently to counter this rising phenomenon. The terrorists' attacks, the clearing of parts of Rio de Janeiro since 2018, the fighting in Mosul and operations in and around 'Gaza' are all examples of this renewed dynamic.

What are the reasons for this trend, what are the characteristics of military operations in urbanized terrain and what does it involve for the components of military power? A short overview.

Why are Urban Operations becoming increasingly the rule? First, let's start with Clausewitz. Although the Afghanistan disaster[1] might lead to a temporary freeze in counterinsurgency operations, friction[2] in our world will not diminish. Climate change, the growing gap between the rich and the poor, religious fundamentalism and worldwide shifts in power will increasingly destabilize our world, which will inevitably lead to more conflicts and the need to include military effects in securing the nations' interests.

Second, most basically, conflicts happen where people live, and in the 21st century, for the first time in world history, more people live in urban areas than in rural ones. This change in global urbanization happened very rapidly. In 1990, the world population was 43% (2.3 billion) urban. By 2015, it had grown to 54% (4 billion). By 2050, nearly two thirds of the global population will live in cities. And while urbanization and population growth are global trends, the world's least developed countries, especially in sub-Saharan Africa and parts of Asia, are growing and urbanizing at a much faster rate than their

1 The fall of Kabul in August 2021 signified a disasterous ending to the 20-year effort of a U.S.-led coallition in Afghanistan.

2 As von Clausewitz famously wrote, 'Friction is the only concept that more or less corresponds to the factors that distinguish real war from war on paper … Countless minor incidents—the kind you can never really foresee—combine to lower the general level of performance, so that one always falls far short of the intended goal.' Carl von Clausewitz, *On War* (Oxford University Press, 2007) 66.

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wealthier counterparts. In some parts of the world, local governance, security and public services have trouble keeping up with the fast increase in population, which offers opportunities for non-state actors to challenge the government and secure their interests. Increasing urbanization might lead to resource competition, contested ownership and control of critical infrastructure.

Third, the growing disbalance between the capabilities of state armed forces on one side and less advanced military powers and irregular groups on the other, has an effect on urban operations (UOs). In order to avoid the increasing capability of long-distance precision effect, irregular groups or weaker military forces will seek cover in urbanized terrain, use the general protection of civilians in armed conflicts and concentrate their efforts where media will offer them a stage. The example of Gaza demonstrates this perfectly.

To conclude, UOs will become increasingly dominant in military operations in the decades to come, whether we like it or not. So, let's focus on the characteristics which are likely to appear in the near future:

1 Perfect Terrain for the Defender

The urban environment is a perfect terrain for the defender. Technological advantages are negated. Operations require large numbers of personnel, while armored vehicles cannot maneuver freely. Area weapons such as field artillery are less effective. Roads become impassable fire lanes. Doorways are such obvious entry points they are known in the infantry as funnels of death. Sewers allow the enemy to reappear in areas previously cleared. Snipers, machine guns, IEDs, suicide bombers — all can attack from a myriad of directions. Well prepared defensive operations can be a nightmare for the opponent, as the Marines know after Fallujah.

2 Magnified First and Second Order Effects

The complexity of the urban environment can be framed by a physical system with an underlying functional infrastructure, a human system comprising a population of significant size and varied composition, and an information system. These systems are interconnected as a system of systems, damage or destruction of one will have resounding implications on all. The complexity and interconnectedness magnify any conflict-induced fragilities in these systems.

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3 Multiple Operational Themes

Multiple operations themes at the same time and space. Due to the characteristics of the urban environment, traditional unit operations can easily be fragmented or dispersed, and units will quite possibly be performing multiple missions at the same time. In other words, the 'three-block war' is a reality in modern UOs.

4 Technological Development

Strong influence of technological development. The fast pace of technological developments in consumer electronics and advanced (home-made) manufacturing possibilities result in a proliferation of commercial off-the-shelf (COTS) capabilities for surveillance, and for (home-made) smart weapons. This will have a particularly strong impact on operations in urban environment.

5 The Resilience of the Urban Adversaries

Non-conventional opponents in UO will be characterized by the presence of extremely resilient state and non-state adversaries. They may not seek to hide the existence of operations or conceal the identity of a sponsor, but simply create enough ambiguity about their location or status to prevent an effective response. They will use minimized command & control, reducing the requirement for communication with senior leaders. They will have modularity in their force elements, combining and scaling interchangeable force elements, weapon systems and other components to be rapidly reconfigurable down to a much lower level than previously seen.

UOs will be characterized by high numbers of casualties, especially among the attacking force. US forces fighting to retake Hue during the Tet offensive in Vietnam suffered an average daily casualty rate (killed and wounded) of 20 per 1000 servicemen, almost three times that suffered during the assault on Okinawa in 1945. Facing such casualty figures, the military might tend to rely on the combination of surveillance assets and airstrikes to target insurgents. While undoubtedly saving military lives, the collateral cost of such a strategy is high in civilian casualties, in civilian infrastructure and in terms of negative reporting in the media.

To summarize the characteristics in keywords: UOs will be more and more congested, cluttered, contested, connected and constrained.

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Which leads to the question: how to deal with this? What can we do to prepare our forces for successful UOs, starting tomorrow? In order to provide food for thought, let me use the components of military power to fuel the discussion.

Physically, UOs require professional soldiers who are physically and mentally extremely fit. The intensity of UOs requires having 'the best of the best' boots on the ground. Command & Control needs to be fundamentally differently organized then used to be the case. UOs require an extremely decentralized C2 system,[3] in which the Sergeant not only has freedom of action, but also access to supporting assets organized at higher echelons. Communication will mostly go bottom-up, not the other way round. In addition, the availability of access to the design of infrastructure above and under the street level (think of sewers) is essential for planning and execution of UOs. Using this information for the preparation of UOs by means of training in a virtual environment is a prerequisite for deployment. Logistics is crucial for every military operation, but the size of the logistic demands in UOs is staggering. The use of tremendous amounts of ammunition, the attrition rate, engineer equipment, communications, physical demands, make the UOs the ultimate logistic challenge. Here is where effectiveness beats efficiency. To rapidly be deployed in successful UOs and sustain these, the military need to have enough stock levels of the essentials in place and at hand. The use of state-of-the-art technology is crucial but requires a complete overhaul of existing procurement procedures. Precision effect is key in neutralizing the adversaries and limit collateral damage.

Conceptually, the counterinsurgency (COIN) principles should be implemented as soon as the situation makes it possible. UOs are characterized by centralized planning, but with extremely decentralized execution. In fact, UOs are 'the Sergeant's wars'. It requires mission command in its ultimate form, with appropriate leadership. The integration of maneuver, fire and effects must be organized at the lowest level, including the peace-time organization of the force. Thus, also enabling to 'train as you fight'. Once established, this integrated and well-trained force at the lowest level will form the key to an effective tactical response against the growing threat of urban warfare. Thus, a response is created to which time is essential. One needs to have a rapidly deployable combined arms force, trained in urban warfare, which can respond

3 C2 refers to 'Command and Control', which is 'is the exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities, and procedures employed by a commander in planning, directing, coordinating, and controlling forces and operations in the accomplishment of the mission' as defined by the U.S. DoD.

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quickly on first appearance of insurgents in towns or cities. Time is critical; the more time insurgents will have to prepare defenses, the harder it will be to dislodge them.

The ultimate challenge remains in the mental component of military power. It is the ability to detect, select, train and coach the leadership that is required for successful UOs, which in their ultimate form are a 'clash of wills' and in which professionalism, ethics, courage, resilience and determination will ensure success. Our values will give us the upper hand from a moral point of view, and even in extreme circumstances this will never lead to an inappropriate use of extreme violence. This ethical component of leadership, thus challenged in UOs, must be integrated in detection, selection, training and management development at all levels of our forces. That is our biggest challenge in the years to come.

Lt. Gen. (*ret.*) *Mart de Kruif*

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Introduction

The City and War

Hugo Slim

When we fight in cities we do not fight on a 'battlefield' but in the most intensely human space we have: a place crammed full of human *being* and human *doing*. Every city is dense with humanity in its high volume of human persons and its myriad manifestations of human activity. If a rainforest is the most intense accumulation of nature in our world, then the city is the most human space on earth because of its abundance of humanity. The city is, quite simply, the most human environment we have. This makes it a very particular battle space and a particularly tragic one in which so much of humanity can be damaged and destroyed. The city's profusion of humanity makes it a very challenging place to fight and win humanely.

This short chapter on the essential humanity of the city is intended to offer some general context to the more detailed ethical discussions which follow in this book. I will look at what constitutes a city, why cities are so important in war and why they are so operationally challenging for humane militaries and humanitarians alike. I start by looking back at the invention of the city and how it has evolved to combine such a density of human significance in a relatively small space. I then look at how the human intensity of cities has inevitably made urban space integral to warfare and humanitarian aid. Finally, I wonder if we can find some ethical and legal comparison between the environment as a space of nature and the city as a space of humanity which could justify greater restraint in urban warfare.

First, of course, I should define what I mean by city. I will use the word rather archetypally, but I recognize that there are vast differences of type in urban space and urban warfare. There are differences of scale between mega, large, medium and small cities, and differences of geography between littoral cities and inland cities. There are political and economic differences between rich and poor cities, capital and commercial cities. There are also different areas of any particular city whose distinctive characteristics are carved out by function, class, ethnicity and their proximity to the city's core or periphery as city centre or suburb. Increasingly today, there are also 'smart cities' that are operated digitally, and other largely manual cities. Urban warfare similarly takes different forms depending on whether its purpose is to raid, surveil, protect, suppress or control certain areas or assets of a city, or to besiege and conquer a whole city

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to then govern or destroy it. In this article, I am thinking mainly of large-scale cities and all kinds of urban warfare within them.

1 The Invention of the City

Cities were invented as new forms of human living about 5000 years ago. In areas around the Nile, the Euphrates and the Indus, and in ancient areas of China and Southeast Asia, human communities managed to create agricultural surpluses which enabled them to move beyond hunter-gatherer groups and simple mobile agriculture. They gathered together in larger groups of tens of thousands of people and began to settle and build elaborate human communities. No longer was everyone a farmer of some kind as expanding economies enabled specialization in crafts, trade, learning and government. These various functions of cities saw their architecture combine sacred, commercial, educational and military structures. Cities became the seats of governments and Gods. Cities like Beijing, Jerusalem, Persepolis, Rome, Angkor, Cusco and Mecca had cosmic significance as sites where heaven and earth touched, usually mediated through the person of a semi-divine ruler and impressive temples of some kind. This gave key capital cities extraordinary symbolic and ritual power alongside their political and economic might. Such auras still surround many big cities. Beyond their worldly and religious power, big cities represent a nation and embody the achievement, spirit and ideals of a people. They are massive markers of identity and pride.

As cities developed across the world, they became sites full of humanity. First in the sense that they contained lots of different people in an extremely dense space. Secondly, in the sense that they became the most complete manifestations of human accomplishment. Cities are filled with everything that humans do, think, create, exchange, dream and desire. They are full of business and trade, learning and religion, homes and offices, art and architecture, technology and crafts, food and fashion, associations and organizations, sports and entertainment. Writing was invented in a Sumerian city and the first book ever written, *The Epic of Gilgamesh*, starts and ends in a city to ponder the question of urban governance. All this goes to show that the whole human world is in a city. The city is an exceptional site of human totality which includes all manner of people and every kind of human activity and achievement.

Cities do not exist on their own as sealed, insular human settlements. They are an integral part of a single system of trade and government with the land, water and airspace around them. The relationship between a city and its hinterland, waterways, airways and digital networks is essential to urban and rural

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populations alike. All cities are profoundly porous via their roads and ports which make urban and rural space essentially one system. Therefore many urbanists describe cities metaphorically as living organisms. Cities are 'alive 24/7' and they 'breathe' in and out through the seas, roads, rivers, seas, airways and satellites around them. When these airways, or arteries, are blocked and cut in war, then cities are no longer 'fed' by their surroundings and they begin to choke and die. So do the peri-urban communities around them.

2 The City as Integral to War

The dense human significance of cities means they have always been integral to war. Their operational significance as seats of political, military and economic power is matched sometimes by their symbolic power. This makes them key actors and objectives in war. They are contested as prizes, detested as sites of enemy power and routinely fought over. Homer's Iliad about the battle for Troy remains a foundational text in Western imagination and normalizes the fact that wars gravitate around cities. Sometimes it makes military sense to go around a city to crush an army on the move. At other times, it is inevitable that one must attack a city to crush an army and a government that is making a stand within it. Wars typically culminate in cities resisting or falling.

Many cities today started life as fortresses. Alexander developed his Asian empire across a string of fortified cities. Many of these, like Kandahar in Afghanistan today, were originally named after him. Like Kandahar, Alexandrian cities have seen war many times over the centuries while also growing into complete cities full of every kind of human activity. The city was introduced to a relatively backwards northern Europe by the Romans who also built a network of military garrisons across the countryside with which to conquer and pacify northern European tribes and fold them into empire. It was often military reasons and not commercial ones that dictated that cities were founded on water as ports, on hills as castles and on trade crossroads for taxation. The sites of many cities were chosen for strategic reasons of defense, oversight, pacification and control. As such they were built with military and governmental purpose. Their combination of political, military, natural, economic, religious and artistic power makes cities intrinsically strategic. Wars are often led, managed and resourced from cities even if military forces are fighting over a much wider area. All this makes it strategically unlikely that war can avoid cities.

The sheer density and intensity of humanity in cities makes it especially terrifying when war comes to the city because so much is at stake for so many.

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Urban warfare is fought out in the human environment not the natural environment. An urban battlespace does not see military forces fighting in nature – in a field, at sea, in the air, in the desert or in the jungle. Urban warfare means fighting in the most intensely human space on earth. Unless people evacuate *en masse*, urban warfare is fought amidst huge numbers of humans who are not actively fighting. It is also fought in, through and around thousands of sites which humans have made, like: homes, businesses, shops, markets, offices, banks, water, gas and electrical infrastructure, supply depots, factories, schools, hospitals and universities, and on which they depend for human growth and flourishing. Urban warfare is also fought in and around places of human beauty and spiritual purpose like religious sites, concert halls, museums, sports arenas and gathering places for ritual and social events.

This totality of humanity in urban space poses a fundamental moral problem for humane military forces fighting in cities: how to kill and destroy within reason in space that is so rich in human construction and human life? This question is well addressed in much of the discussion of military ethics in this book which rightly centres on the conduct of hostilities in urban warfare. But the question of reasonable humanitarian aid in cities is also an important one, not least because it must always be the intention of humane military forces to enable the provision of humanitarian aid wherever it is needed.

So, what is required of humanitarian aid in cities? The answer is almost everything. This is because a battlespace of total humanity requires a total humanitarianism. People who are wisely fleeing cities in advance of attacks need support as displaced people. People trapped in cities need help with evacuation or, if they are staying, with many of their basic needs as military action takes its toll on their livelihoods and living conditions. Failing businesses mean people need cash to buy food if markets are working, or food itself if they are not. Sickness and injury in the civilian population usually increases in war while clinics and hospitals are struggling for salaries and supplies while key workers may also be fleeing. Essential infrastructure for water, sewerage, electricity and rubbish collection must be maintained to save lives and prevent epidemics. Schools also need to be continued wherever possible as sites of learning, social reassurance and protection for children. Some humanitarian aid will need to be delivered directly and at scale, but much can also be diffused indirectly through municipal and community organized humanitarian initiatives that always spring up during crisis. Civilians always help themselves as much, and often more, than they are helped by aid agencies.

War does not just destroy cities. It also creates new ones. As people flee away from a city, or from one part of a city to another, they change urban space forever as new unplanned urban space is suddenly made. These new impromptu

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settlements require significant aid as they start life as humanitarian cities. Maiduguri in Nigeria has seen a massive influx of displaced people from Boko Haram's largely rural insurgency in the last ten years. Before the war, Maiduguri was a relatively small regional town of tens of thousands. Now it is destined to be a city of millions. Cities in Turkey and Germany will forever be changed by the four million Syrians welcomed as refugees by Turkey and the 1.2 million welcomed by Germany. Most of these people will never return to their Syrian cities which will be greatly diminished in the years to come. Cities in Lebanon and Jordan have been similarly made and changed. The large refugee camps of Somalis in Kenya are effectively refugee cities today, as are the displaced camps of people in Darfur which are now fast becoming towns and cities, some of them being newly fought over as such.

3 How Can We Protect Cities in War?

Many humanitarians and several States increasingly feel that urban warfare is an especial abomination because of the immense and inevitably indiscriminate damage and injury that unguided and explosive weapons inflict on civilians and civilian objects in such dense human space. But is there some way we can expect special protection or immunity for cities beyond current legal regulation because of their especially dense humanity? Perhaps a comparison between cities and the natural environment could inform our thinking and create a new level of exemption for cities during war.

Humanitarian ethics increasingly places great value on the non-human life of the natural environment as part of our green turn to limit climate change and conserve biodiversity. The laws of war deem the environment worthy of an essentially civilian character because it is overwhelmingly natural, precious in itself and a vital instrument for human survival. In short, the environment should be protected and beyond the fight. The city, as we have seen, is overwhelmingly human and so intrinsically precious as a site of humanity. Its infrastructure and activity is also instrumental to human survival for millions. So, perhaps cities are also deserving of an essentially civilian character? If the environment is dense nature then the city is dense humanity. A comparison with the environment might encourage us to see cities differently and worthy of protection and immunity as a whole. Maybe there is moral scope for arguing that all cities should be placed beyond the fight.

Sadly not. There is, of course, a difference between nature and humanity. Nature is genuinely disinterested in our human fights and has no moral agency within them. Unless nature is coerced and conscripted into our wars as stone,

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trees, hills, metal, water, fuel, mules, dogs, horses and elephants it has no part in war. Nature is wholly abused in our wars. This is not true of cities. Urban humanity is much more morally ambiguous in war. Military forces, political leaders and their various command centres and operational units live in cities. Many civilians in cities take sides in war and play active and consenting roles to support the fight. They are not all neutral and coerced into war like trees and stones. The fabric of the city is routinely adapted to war for military purposes so that large parts of it become military objects and objectives by human choice. Nature does not fight back deliberately in war. As human constructs, cities do fight back. Because a city can contain deliberately warring humans as part of its total humanity it cannot merit total immunity and an essentially civilian character as a whole, but only in part.

This is the tragedy of urban warfare that unless warring parties are prepared to leave the city and fight outside it then urban warfare is morally justifiable and militarily necessary. Attacking part of a city may not be the same as attacking virgin rainforest. Dense humanity is morally problematic in a way that dense nature is not. This means that cities cannot expect general immunity but only specific protections for certain people and certain places. Urban warfare cannot be abolished. It will remain with us for the foreseeable future and create the many challenges for military ethicists and humane military forces that are so importantly explored in this book.

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CHAPTER 1

One Damned Thing after Another

Battle of Narratives and Urban-War Chaos

Patrick Mileham

Summary

My aim in this chapter is to explain the dynamics of what are termed 'narratives'. I place in the fore-front the realities of 'battles of narratives' characteristic of all armed conflict, violence and extreme competition between human-beings, in the attempt to understand what is happening. Truth and reality are under test, sometimes severe. Urban warfare is comprehensively described in other chapters, as derived in individuals' lives and experiences. The context provides extreme events with a multiplicity of concurrent narratives, most difficult to understand let alone resolve physically and in accord with ethical principles. I also find that the physical and mental battles of narratives can be both real and synthetic accounts. That means too often we are tempted to be fixated on 'The Narrative' as a metaphor for communications of every sort.

Keywords

narratives – urban warfare – communication – truth

One damned thing after another[1]

ARNOLD TOYNBEE, historian

• • •

1 Quotations, attributed to Arnold Toynbee, *A Study of History,* 12 volumes (OUP 1934-61); Guillaume de Machaut, '*Ma fin est mon commencement, et mon commencement ma fin*'; Sun-Tzu, *The Art of War* (Folio 2007) Ch 1, 78 – this statement is perhaps the source of the quotation, 'The first casualty of War is Truth', variously attributed to Aeschylus, Dr Samuel Johnson and Senator Hiram W Johnson (in the US Senate in 1917); Francis Bacon, Lord Verulam, *Novum Organum,* (1620), Aphorism 84 from the Latin of the gods, *'Veritas filia temporis'*.

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My end is my beginning and my beginning is my end

GUILLAUME DE MACHAUT, poet-composer

• • •

Warfare is the art of deceit.

SUN-TZU, philosopher

• • •

Rightly is truth named the daughter of time, and not of authority.

FRANCIS BACON, statesman

• •
•

1 Humankind: Needs and Tensions

As a species the needs of humankind are both extremely simple and vastly complex. In order to live and thrive, a person has to learn to reconcile his or her unique outward-social and cognitive-emotional inner-life, deeply sensed or shallow, within a human collective, a community ranging from the intensely-knit to the widely dispersed and diluted. Every person has a unique self-awareness, an 'identity' more or less relating to other unique individuals. The individual then lives a life more or less in accord with a sense of internalized, subjective corporate moral factors and also maybe, through intuition and rational, wider-objective, ethical guidance in line with other people and humankind generally.[2]

To understand the more-than seven billion individuals alive today – dwelling on their remembered and recorded past in up to five-thousand national-communities[3] domiciled in a hundred and ninety-five nation-states – one cannot ignore the magnitude of tension and stress, biological, physical, social and political. There are countless differing ways of grasping shared and enduring intergenerational understandings, held by individuals and communities, including intangible spiritual beliefs transcending every-day cognitive

2 The distinction between moral and ethical is explained in Patrick Mileham, Working Paper 'Moral or Ethical in Military Affairs', as yet unpublished but extending findings in 'Military Integrity: Moral or Ethical' in Peter Olsthoorn, *Militay Ethics and Leadership* (Brill 2017).

3 Michael Ignatieff, 'The nation-State and Promise of Sovereignty' in ed Johanna Möhring and Gwythian Prins, *Sail On, O Ship of State* (Notting Hill 2013) 27.

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consciousness – with sequences of events with beginnings and endings, causes and effects, in accord with some sort of 'meaning'. From ontological sensibilities and faiths, the understanding of what can be known, either through rough awareness, deeper intuitive or systematic epistemologically-guided enquiry, is a feature of advancing humankind over time. This can be deemed progress for the many, but maybe conversely regressive for numerous other humans living today.

All this has been written up by Hannah Arendt in her classic book *The Human Condition,* and more recently by Yuval Noah Harari in his *Sapiens* and *Homo Deus*[4]- being 'brief histories' of 'humankind' and 'tomorrow'. But beware. The speed and sweep of new scientific and technological knowledge ignores – as moderately irrational, irrelevant or wholly irritating – the spiritual quest and understanding of the meaning of life and what might transcend it held very deeply by billions of people. Actual or impending chaos, which is described elsewhere in this book and in other descriptions of violence and conflict, is connected with continuing religious faith or metaphysical humanistic opinions, sometimes with intense and magnified beliefs, spurring actions in an acute conflict between good and evil.

So the sense of 'heritage' from antiquity, and 'destiny' towards eternity, remain particularly strong in the imagination of a religiously-inspired 'sacred imagined community',[5] or theocratic-state. But many modern-day secular and nationalistic traditions seek a future 'vision' of prophetic significance. Every sort of organization also likes to have a vision, a forward-narrative by any other name, a set of more or less articulated expectations and ambitions.

In a chapter of the 2020 EuroISME series book *Jus Post Bellum.* I included a brief codicil to the expert study of the 'human condition', much of which applies to human narratives[6] and many other activities, disciplines and lines of enquiry. I wrote of the need for humans to progress from 'brute facts' to those accepted as advanced and rational, 'instituted' within organized communities, from the simple to the ultra-sophisticated, as explained at length by Berkeley sociologist John Searle.[7] Organized communities are those which create 'order' from chaos and disorder – for the greater good of some, most or maybe all of their members and others beyond.

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4 Hannah Arendt, *The Human Condition* (University of Chicago 1958) and Yuval Noah Harari, *Sapiens* (Vintage 2011) and *Homo Deus* (Vintage 2015).

5 Benedict Anderson, *Imagined Communities. Reflections on the Origin and Spread of Nationalism,* revised (Verso 1983,2016) 41.

6 Patrick Mileham, Chapter 9, 'Counter-Intuition in a Violent and Retro-futuristc World: A Rejoinder to the ICRC "Roots of Restraint in War" Research', in Patrick Mileham, ed *Jus Post bellum. Restraint, Stabilisation and Peace* (Brill 2020).

7 John Searle, *The Construction of Social Reality* (Allan Lane 1995).

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I also dwelt heavily on cooperation and competition, the joint-dynamics of which '… accounts for our ecological success'. So claims UK science-writer and parliamentarian Matt Ridley. He continues that '… we define virtue almost exclusively as pro-social behaviour, and vice anti-social behaviour'.[8] But in benevolent and beneficial competition, the same action can be both pro-social and anti-social. So briefly good and bad can be synthetically interchangeable, notwithstanding arguments of the well-known 'selfish gene' of Richard Dawkins.

Robert Axelrod, US political scientist, also dwells on the dilemma of cooperating as individuals with other humans, as distinct from competing. Axelrod asks 'under what conditions will cooperation emerge in a world of egoists without central authority? Yet we also know that … civilization is based on it'.[9] Such analysts suggest that the huge progress of humankind in the long run is based on the ways we seek to overcome adverse and destructive competition by cooperating, reducing the impulsive- competitive syndrome of 'tit for tat', while promoting the good in a certain spirit, a 'robustness of reciprocity'.[10] In all sorts of human endeavours, patient counter-intuition can lead to substantial beneficent compromise.

However, how far a person's inner life accords with what other individuals in a community hold as virtuous is as near as we will ever understand as an ethical theory of the purity and perfection of human behaviour. None of us is perfect, in ourselves or as members of and within our communities.

So much for the needs of singletons which Leo Tolstoy deemed as 'infinitesimals', and communal groups of individuals somehow integrated in the march of human events in what he called '… the laws of history'.[11] Next what are the tensions of modern-day living, and of old cultures clashing with new circumstances, events and human relationships?

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8 Matthew Ridley *The Origins of Virtue* (Viking 1996) 6.

9 Robert Axelrod *The Evolution of Cooperation* (Penguin 2005) 169.

10 Robert Axelrod article 'Evolution of Cooperation', http //Stanford.eduz>books.pdfaxelrod accessed 5 June 2021. This also accounts for the literature of faith in human progress and peaceableness in Jared Diamond *The World Until Yesterday* (Penguin 2012), Stephen Pinker *The Better Angels of our Nature. Why Violence has Declined* (Viking 2011) and Ian Morris, *War What it's Good For* (Princeton 2014). This view is in contrast to Lawrence Freedman *The Future of War. A History* (Allan Lane 2017) and Toby Ord (see note 17 below).

11 Leo Tolstoy, *War and Peace* (OUP 1983) 880. See also Arnold Toynbee (n 1) and Samuel Huntington, *Clash of Civilizations and the Remaking of the World Order* (Simon and Schuster 1996).

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2 Chaos to Order

While the title of this section can be read with a sense of irony in two ways, it is necessary early to define chaos, contained in the title of the chapter. Greek readers will tell us that chaos means something in cosmology after 'void' and before 'form' – about the 'first created being …' the entity or entities and circumstances out of which came '… primeval life'. Chaos is also defined as '… a raw confused mass of … [dynamic] matter, badly combined discordant atoms of things, all mixed up in the same place'.[12] Atoms can be described too as infinitesimal.

The art or science of moving from chaos to order is based on the beginnings of primeval interpersonal articulation and communication of actions and ideas, from bodily gestures and grunts to spoken words and sentences, ideographs and simple stories, then progressing into flowing and self-perpetuating, sophisticated, instituted languages. As languages have developed in human history, so in tandem has institutional order developed in communities, particularly many thinking of themselves as nations (in Ignatieff's estimation). A 'nation' has been defined simply as 'an ethnic community that enjoys or aspires to a measure of autonomy in the organization of its public life through institutions of its own religious, educational, legal or political'[13] and in a single or a number of aligned languages.[14]

Such community-nations combine to form the nearly two hundred current-day nation-states, many being federal by nature, and increasingly joining together and cooperating in a 'society of market states'.[15] Many such nations are changing, becoming inclusive multi-ethnic entities in which affiliation is defined in law as 'citizenship' rather than primarily by birth-descent, kinship and geographical-demographic racial distinction from antiquity. Much is explained in the history and understanding of global migration, over say the past three thousand years, and the more recent astonishing phenomenon of English as the growing global language,[16] in which narratives can now be so easily communicated and exchanged.

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12 Oxford *Companion to Classical Literature* (OUP 1997) 124: Ovid, *Metamorphoses* L.10 ff. Cf *Genesis*, 1,1 in the Judeo-Christian narrative.

13 David Miller, *On Nationality* (Oxford Scholarship Online 1997) summary of Chapter 2. https://oxford.universitypressscholarship.com/view/10.1093/0198293569.001.0001/acprof-9780198293569 accessed 20 July 2021.

14 Anderson (n 5) 67–82; also, Möhring (n 3).

15 Philip Bobbit, *Shield of Achilles. War, Peace and the Course of History* (Allan Lane 20012).

16 Patrick Manning, *Migration in World History* 2nd ed (Routledge 2013) and David Crystal, *English as a Global Language* 2nd ed (CUP 2012).

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There is no space in this chapter to consider the curious, sometimes counter-intuitive positive effects of study in the methods and methodologies of such novel disciplines as 'complexity theory' and 'chaos theory'. The current research, thinking, political action and legal status of 'equality, inclusiveness and diversity' linked to millions of personal self-identities, also flourish as narratives. The validity of which themselves cause conflict-situations, but this is likewise beyond the immediate scope of this chapter, even if such factors cannot be merely ignored. Similarly, the huge dynamics of 'information-disinformation' expanding into the orbit of international conflict as 'information warfare', mixed with the personal information and discussion content of thousands sometimes millions of people through social-media – like-minded or antagonistic – are also huge subjects of global significance in their own right.

We live in an age where, being magnified, human 'infinitesimals' are far from small and powerless, but cannot ignore there are millions of individuals suffering. Suffering is the effect of the failure of politics in nation-states, the failures of legal safeguards, of sustained and fair commercial activities, of equitable access to commodities, of freedom of beliefs and actions, of confusion and double standards about migration and movement across boundaries, assimilation of cultures, races, ethnicities, religions, and of course personal, unique identities. All of these actors are now politicized, some intensely, and anyway fall into numerous national legal jurisdictions to confuse what is supposed to be even, universal standards of truth and justice. When such dynamics are so heterogeneous and fear drives aggression particularly in urban living, a grand plan for a civilized world, the *Oikoumenê*, benign and cooperative for all humankind seems as elusive as ever.

Of course, chaos and order are existential conditions. To remind us, and on a truly sober note, Oxford philosopher, Toby Ord warns about our current and future world, with accidents maybe leading to chaos and catastrophe. In our biosphere we humankind live in very dangerous times, indeed of growing, combining and accelerating existential risks, natural and man-made. He lists 'nuclear weapons, climate-change and environmental damage', with 'pandemics', politico-civilizational 'dystopian risks' and the 'unaligned risk of artificial intelligence'.[17] To that we should add the fact that many millions of individuals suffer personal existential risk daily, because of their poverty and the inequalities of their circumstances in life[18] contrasted with others.

17 Toby Ord, *Precipice. Existential Risk and the Future of Humanity* (Bloomsbury 2020)89–165.

18 See Jason Hickell, *The Divide* (Heineman 2017).

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For better or for worse, it is the act of articulation – in spoken and written words, transmitted and frequently magnified – which leads on to the place of stories, records and narratives, past and present, positive and negative, successful and failed, good and evil, close to the truth or false, all supposedly shaping a hypothetical, imagined future life. That endeavour is called politics.

3 Narratives

Next it is important to consider what is the essence of 'The Narrative' or 'the narrative' and the pluralities of 'narratives'. As individuals, from sense-data and experienced happenings we can understand enough to perceive a forward-looking life ahead, with understanding and some confidence as well as a feeling of security if not certainty. Even so, in our human consciousness, we often have difficulties coming to terms with the past. Sensed data refers of course to the conscious, subjective interpretation by individual human beings in real time and real place and particularly within the contexts of communities, maybe races, religions and nations looking backwards to their 'imagined communities', now imagined twice-over. Our communities thus have more or less compressed versions from the past, of individuals' and everyone's cultural joint-stories.

As human beings we are intuitively most comfortable with an understanding – hard-wired perhaps to use a metaphor for physiological DNA – to the sequence with a beginning, a middle and an end, whether episodic in some project or whole life. Anyway, we are always in the middle of something but also looking forward – eagerly if we are optimistic, or alternatively with misgivings or dread. What I believe Leo Tolstoy, quoted above, meant with his characterization of individuals as 'infinitesimals', being people intent on acting out narratives to accord with the supposed '… laws of history'.[19] But individuals' actions can so often merely be recorded as phenomena and happenstances without observable, coherent, comprehensible and comprehensive cause-effect connections.

Contrasting the two, a record or *'chronology'* can be stated at worst to fall into a 'chapter of accidents', with

19 Tolstoy (n 11) 880.

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> … 'one damned thing after another', with no intelligible connection between them. [On the contrary] A *narrative* serves as an explanatory function for events described … unified by a theme and organized with respect to its conclusion.[20]

While some 'damned things' may be seen as phenomena in 'just-so stories', others are indeed wholly damaging. A narrative implies interaction as complicity or competition with other people, maybe many people, and thus 'explains' with some confidence the events, in regard to circumstances, relationships and categories, as well within and beyond the organizations and institutions (Searle) with a history and in our case, the competition of mutual adversaries.

'Heritage' has been mentioned already as a concept and sense of the past. A person's or community's heritage may be positive or negative. How a negative or distressing heritage can be in any sense reprehensible, in finding blameworthy events, circumstances, and relationships with historical people, can be problematical. Anyway, implicitly there should be attempts even compunction to make a hind-sight or *historical-narrative* as factual, realistic and truthful as possible, and a *forward-narrative* likewise. Any forward-narrative categorically must be more or less imaginative, hypothetical and, with hope and expectation obviously and frequently deterministic. But can such a supposed ending or destiny be factual, realistic and true in any sense?

On the grand scale, institutions of every sort, no less nation-states or professional armed forces, have institutional policies, agendas, articulated plans and maybe detailed forward-narratives about their desired progress, continuities and ends, as well as coping with unexpected happenings along the way. How realistic and truthful are these hypothetical forward-narratives, personal or corporate, friendly or hostile, remains a matter of wonder and surprise. Such however is the purpose of this chapter, wondering about the detail and sweep of armed conflict, particularly in dense urban contexts as well as across open spaces of terrain, seascapes, or above in the air and outer-space, or in the electronic ether here and beyond.

But what do humans hold as 'beliefs' about the significance of facts and truths in the reality of living, and what do we take from the past in 'faith'

20 For 'One damned thing', see Toynbee (11); R. Noggle, 'Review of the Constitution of Selves', *Ethics,* 1998, vol 108, 4, 804 and D. Teichert, 'Narrative, Identity and the Self', *Journal of Consciousness Studies*, 2004 11, 183, cited in Joseph Neisser, *The Science of Subjectivity* (Palgrave 2015) 27. This author's emphasis.

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about the future? We exist, perhaps, on earth in order biologically to procreate, physically survive (on competitive Darwinian or cooperative principles) and prosper enough emotionally to re-create in our pastimes satisfaction and happiness (on Aristotelian principles, whether individual or collective). But we also seek advantage even 'perfection' – overcoming bad things, maybe our sins – and perhaps even with intent to reach out for a state of 'salvation', which is what Matthew Arnold said was the purpose of faith and belief within '… all great spiritual disciplines'.[21] Then we die, with faith in our religious narratives and a hopeful, benign, happy here-after, or in a state of disbelief of such nonsense pending nothingness. Either way our communities and cultures live on, but also change over time.

It cannot be denied that vast numbers of people do frequently believe in things that are indeterminate, transcendental and eternal, a state of life after death. Can there be divine intervention, or cosmological pre-destination determining all things – free-will being 'illusory'? Many people believe such arguments are rubbish, but according to writers like Galen Strawson, Stephen Pinker and Yuval Noah Harari,[22] the former cannot be proved by science, and the latter is entirely possible. In any case we cannot ignore and, emphatically, have to accept that there are billions of people who are guided daily by deep religious and faith systems – notably devout Christians, Jews, Islamists, Confucians and Buddhists. Faith is subjective, by definition, but perhaps seeking a better state of objectivity outside the self. Free-thinkers, Humanists and Pantheist have self-defined beliefs and faith too.

However, religions have always been divisive because they more or less exclude other religious beliefs. They can metaphorically or actually attack other religions and beliefs, and of course have their own deniers and apostates, whose freedom and lives may be endangered by fierce, uncompromising zealots. They have narratives, books, disciplines and laws, with beginnings, middles and ends in mind. They are of living and dying significance. Above all they have and continue to cause violence, conflict and war. So holy wars, jihads, are part of today's chronology and narrative of humankind.

21 Matthew Arnold, *Culture and Anarchy* (OUP 1932) 130.

22 Galen Strawson, 'Free Will', Determinism and Freedom Philosophy Website, https://www.ucl.ac.uk/~uctytho/dfwVariousStrawsonG.html and 'Against Narrativity' in *Real Materialism: and other Essays,* Oxford Scholarship Online: September 2008 DOI;10.1093/acprop:oso/9780199267422.001.0001 both accessed 4 July 2021; Stephen Pinker, *The Blank Slate* (Allan Lane 2002) 175–80; Yuval Noah Harari, *Homo Deus* (Vintage 2015) 328–332; also Sam Harris, *Free Will* (Free Press 2012).

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4 Conflict and Counter-Narratives

One almost absolute truth we can claim in this chapter, is that in any one state of chaos, violence, conflict and war – or many interrelated chaoses, violences, conflicts and wars – there will be two institutional narratives, or many, maybe very many, wholly dynamically opposed, binary narratives. Depending on the groups involved, whether perpetrators of violence and force or defenders and victims of the same, the effects may spread far and wide – and be long lasting far into the future.

The notion of beginning, middle and end fits in neatly with our consistent, Western-orientated sub-theme of the Just War, with justified if not judicial killing, wounding and destruction, according to the *wunderlicht dreifaltigkeit* of *jus ad bellum, jus in bello* and *jus post bellum.* This introduces the corpus of international law – in our context chiefly being the legal positivism of Law of Armed Conflict (or International Humanitarian Law) and Human Rights Law – which need clear historical evidence after the event and forward plans as narratives for purpose of sure future legal compliance or sanction.

What is war? Why is it different from violence? Does each community have in mind a beginning, a middle and an end? The whole point of war-fighting is that one side sees in the other side some or many facts, realities and truths not just disputed but dangerous opposites. One side's absolute truth is seen as another side's downright lies. Both sides can mutually and reciprocally explain in their narrative many life-threatening contrary dynamics, demanding lethal action to compel the enemy to change their minds, by lethal categorical imperatives.

Carl von Clausewitz wrote that categorically war is '… an act of force to compel our enemy to do our will'. The measure of success in our efforts is '… to make him incapable of further resistance'.[23] In essence we are trying, more or less to persuade, or force our adversaries to cooperate (Ridley, Axelrod) with our will. A question; is the best form of war a forcible convergence of narratives, gained over the events and operations of war – the middle part of the narrative i*n bello* leading to willing compliance of the defeated side *post bellum*, however just the settlement?

Anyway, Clausewitz continues.

23 Carl von Clausewitz, *On War*, tr and ed Michael Howard and Peter Paret (Princeton 1984) 75.

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> Battle is the bloodiest solution while it should not be considered as mutual murder – its [war's] effect is rather a killing of the enemy's spirit than his men, even though its name is slaughter [*Schlagt*] and its price is blood.[24]

However, regarding narratives, and most significantly the '… continuation of policy' being the conflicts of peoples and governments, Clausewitz asserts emphatically 'Is not war just another form of speech and writing'? He adds '… its grammar may be its own, but not its logic'.[25] Speech, writing, grammar and with conflict as an act of communication in mind, again implies at least two narratives if not a magnified multiplicity. But such are unlikely to be in the same language. There may be a scores, hundreds of languages and cultures involved in the one conflict not subscribing to English. Conflicts dynamically interact and often ramify across far-distant borders.

The competitive function then in all military forward-narratives adopted suggest and foretell how to outgun, outmanoeuvre and above all outwit an adversary. As all deadly fighting is experimental, the trick of our stratagems – involving serial deceit, noted by Sun Tzu above – is to make fewer mistakes than our adversary. However professional and democratic we like to conceive of ourselves, and desire to lead our enemy to be rational and surrender to our will, we unashamedly attempt to inflict disorder on our enemy and maybe graduated chaos.

However, most war-faring professions on the one hand, and on the other, quasi-legal community militias, illegal groups, jihadists, terrorists and other categories of fighters, have something in their minds about what they want to achieve, at the expense of others, including some very nasty inhuman methods and outcomes. That means some sort of deterministic narrative conceived as ending in triumph, after which everything will be all right and good. One forward-narrative can be the very opposite of the other forward-narratives, even if some of many such forward-narratives converge for some purposes some of the time.

But the whole point of my chapter is to demonstrate that all parties to a conflict, once provoked to act – they believe justly – like to have a worked-out plan for some time ahead with a pre-determined sequence of offensive actions and events, or reactions to events, with the intention to gain objectives leaving all adversaries physically powerless and ready to negotiate a settlement. That

24 *Ibid.* 25.
25 *Ibid.* 69, 605.

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consists in politics as expressed in professional, objective military doctrines and plans. For professionals in liberal democracies, that means somehow to bring about an entirely satisfactory peace for all parties in the now-concluded conflict.

Narratives therefore can be 'captured' by the side which physically prevails. Arguably they sometimes need to be captured entirely to meet initial *jus ad bellum* criteria. Our aim is to inflict on our adversaries one damnable thing after another, destroying their narrative chapter by sorry chapter. Their aim is the same, destroy any explanation and coherence leading to a conclusion of our choosing. So, our enemies' good is our bad, their facts may be our counterfactuals, harm, death, destruction, devastation, starvation, bankruptcy etc. Their reality is our nightmare, unreality, surreality and every other opposite mental state. Our enemies may outwit us even if we have the capacity to outgun and out-bomb them with overwhelming asymmetric force. The truth for one side may be denial for the other. So victory, winning, is about capturing the enemy's forward-narrative, and disarming the 'spirit' of that narrative. In victory or defeat, does this lead to a physical and psychological moment of shared truth, for all sides?

But not all adversaries are the same. At worst our adversary may be intent only on completely eliminating us – not rationally seeking a compromise or cosy cooperation – just our death, destruction, obliteration, a clear space cleansed of all our all people. So much of the middle-part of warring narratives is ghastly violence, seemingly for violence's sake and sheer butchery for the sake of butchery. *Schlaght*. Life can be very brutish nasty and short. For instance, from where does Islamic State (ISIS) claim its mandate and socio-geographical Caliphate?

So, what is a satisfactory end? Reverting to Searle's and Ridley/Axelrod's dichotomies, the fragmentation into violence of many nation-states is all about the competition of cultural and corporate institutional life. Benedict Anderson, echoed by Yuval Noah Harari, writes of nationhood as 'imagined communities',[26] all five thousand large and small, integrated within nation-states or not, as enumerated by Ignatieff (n 3) with their own historical narratives, Harari also dwelling on the 'hindsight fallacy' of mythology, the shakiness of all human history as chronicled or narrated.

To end this section everything in war then is experimental, subject to success or failure of cause and effect in physical battle and 'narratives'. However,

26 Anderson (n 5) and Yuval Noah Harari who wrote of the 'hindsight fallacy', in *Sapiens* (n 4) 405–8, 265–9.

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urban violence, urban warfare is factually chaotic. Too often participants do not know of any possible endings to the chaos, or know how to control and stop facts from happening, or in our case, from the newly-acquired liberal-democratic tradition since 1945, of intervening responsibly for the good. While a narrative may be factual, also significantly it can be symbolic and metaphorical – as explained in the penultimate section below.

5 Open or Urban Warfare: How Many Narratives?

So far, I have been writing in the first person singular and plural, me and us, my and our enemies. What narratives, how many narratives or chronologies of famous victories, half-successful events or failed happenstances are we thinking about? In a sense we have to view ourselves as one of the parties in conflict, close or distant but subjectively far from perfect ourselves, as well as adopting a neutral objective, balancing stance.

Western nations which have taken part in conflict in recent years, have experienced 'good' wars and 'bad wars', the former when they achieve aims and follow a reasonable 'narrative', the latter when many things go wrong and the plans fail. For Britain the liberation of the Falkland Islands across the oceans in 1982, and Kuwait across the open desert in 1991 – as part of the US-led international coalition – were 'good wars', as was the Kosovo incursion of 2001, with straightforward military plans and reasoned narratives with not too many mistakes or surprises. The earlier settlement of the Bosnia-Herzegovina crisis in a fragile compromise is narrated by Srđan Starčević and Ilija Kajtez in the chapter on the Dayton Peace process, in the EuroISME book *Jus Post Bellum*.[27]

However, according to the evidence in UK's the post-war Chilcot Report,[28] the US-led coalition's invasion of Iraq in 2003 did not seem to have any sort of

27 Srđan Starčević and Ilija Kajtez, 'Dayton Peace Agreement for Bosnia-Herzegovina – *Jus Post Bellum*: A Choice between Stability and Change' in Mileham (n 6).

28 See *Falkland Island Review. Report of the Committee of Privy Counsellors* (Her Majesty's Stationery Office 1983) and *The Falklands Campaign: The Lessons* (HMSO 1982); UK MOD (Army)'Operation Granby An Account of the Gulf Crisis 1990–91and the British army's Contribution to the Liberation of Kuwait' (MOD Army 1991); Her Majesty's Privy Council, *Report of The Iraq Inquiry. The Chilcot Report* – Executive Summary (Canbury Press 2016). In contradistinction, one can read Patrick Hennessy's, *Junior Officers' Reading Club* (Penguin 2010) and find an alternative in black humour of the sheer confusion of intentions and perceived realities during his deployments to Iraq and Afghanistan. See also the work of Brian Orend, sampled in his Foreword to the EuroISME book, Mileham ed (n 6) x–xiv and 'Justice after War: Towards a new Geneva Convention on *Jus Post Bellum*' in *Raison Politique*, 2012/1, No 45, 43–55.

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pre-planned 'occupation' phase as the belligerence of the fighting diminished, and leading to a *jus post bellum* chapter. The occupation and re-establishment of security failed, particularly in Baghdad for the US and for the UK's troops, in Basra. Note both are 'cities'.

The British contribution to the campaign in Afghanistan, particularly from 2006 to the time of the withdrawal of combat forces in 2014, was until recently (July 2021) inconclusive. By then there been no inquiry instigated about 'lessons learnt' for the effort involved, matching the Chilcot Report. It is unlikely to be deemed a 'good war'.[29] The Western-supported Kabul government obviously had one declared narrative, the Taliban another. From 1996 their consistent narrative had been to achieve an eventual heritage-destiny for 'the religious purification of the country and the creation of an emirate'[30] for Sunni Islam. As a consequence of his release from prison in Pakistan – with the direct agreement of the then US President (in early 2019) via the Doha Agreement with the US (February 2020) – the military-political supremo Abdul Ghani Baradar precipitated the ultimate Taliban re-capture of the whole of Afghanistan and its capital city Kabul by the end of August 2021. Shia-dominated nations in the region have other heritage-destiny views of purity and perfection in Islam. Conscience makes cowards of some, but avengers of others. Avenging religions are contrary to the whole agreed corpus of International Law and the ontological intuition for unity of civilization and humankind.

But then many Western nations' professional armed forces are one of four types of warfighting 'soldiers and fighters'. The already-mentioned ICRC Report (n 6), revealing the number of fighting groups involved in conflicts at any one time, draws the distinction between

– Integrated State Armed Forces (more or less professionals)
– Centralized non-state armed groups (including some militias)
– Decentralized non-state armed groups
– Community embedded armed groups.

One could analyse the thousands of military and quasi-military groups around the world to assess the likelihood of their forward-narratives and plans.

While other chapters of this book well explain the connection between urbanization and armed conflict now and in future, in 2017 the proportion of

29 One result of the Chilcot Report was a modest MOD 'handbook' entitled *The Good Operation* (2017) 'for those involved in operational policy and it implementation', across UK government departments, https://www.gov.uk/government/publications/the-good-operation. There is an equivalent US document.

30 *The Guardian* https://www.theguardian.com/world/2021/aug/15/talibans-abdul-ghani-baradar-is-undisputed-victor-of-a-20-year-war accessed 16 August 2021.

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world population living in urban areas was already estimated at 55 percent. 'This figure is likely to rise to approximately 66 percent (an extra two billion people) by 2050',[31] according to demographic projections for the UK Ministry of Defence. The same research indicates a rise in migration globally from 258 million to 400 million by 2050. According to a UN report in 2018 70.8 million people had been forcibly displaced by conflict, with Syria, Afghanistan, South Sudan, Myanmar and Somalia accounting for 67 percent of displacements.[32] The point of mentioning these figures is to highlight the countless millions of individual and community 'chronologies' of unpleasantness and forward-narratives of despair – but also possibly of hope.

Then about actual conflicts the ICRC reports that doubling since 2001, by 2016 there were well over seventy internal, non-international armed conflicts. Each hugely complicated, the Committee reported that in 2018 'one in three conflicts are between only two belligerent parties …'. Continuing, the ICRC states that

Forty four percent have between three and nine opposing forces, and 22 percent have more than ten. Some conflicts have hundreds; by the end of the war in Libya [2011], 236 separate armed groups were registered in the city of Misrata alone [and] … over a thousand armed groups were fighting in Syria in 2014.[33]

One can conclude that all these belligerent parties had or have some sort of forward-narrative in mind, even if the result was and is to inflict more and more chaos on adversaries, heightened and magnified by destructive politico-military-religious zealotry.

The ICRC ominously admit that self-proclaimed jihadist groups have proliferated throughout the Middle East, Africa and Asia aided by low-cost telecommunications technology and social media platforms all adding to the Babel cacophony of narratives and damnable happenings. Continuing with the figures, by 2017 some 40 percent of States experiencing armed conflict were confronting jihadi groups and the vast majority of all foreign interventions are currently against armed groups with a jihadist agenda, fuelled by people

31 UK Ministry of Defence, *Global Strategic Trends. The Future Starts Today* 6th ed (Development, Concepts and Doctrine Centre 2018) 64, 62 https://www.gov.uk/government/publications/global-strategic-trends; In his new book *Urban Warfare* (Wiley 2021), published just as this book is going into print, Professor Anthony King explains why all the major military battles of the twenty-first century have taken place in densely populated urban areas rather than in more open areas.

32 UN HCR *Forced Displacement Report* 2018.

33 ICRC, *Roots of Restraint in War* Report (ICRC 2018) 13.

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claiming to be agents of God, destroying infidels and unbelievers, or at least ridding their countries of such.

So, referring to foreign interventionists and their nations' motives, perhaps too many Western liberal democracies completely fail understand these sorts of dynamics in the plans and narratives of holy warriors, with eschatological fire in their hearts – beginning in eternity and ending in immortality.[34] But what are the forward-narratives, for instance, of the Assad regime in Syria, the US and NATO coalition counter-narrative, the Russian narrative, and those of Turkey, Iran and ISIS?

Finally and significantly for the theme of this book, the ICRC also confirms that indeed armed conflicts are increasingly fought in cities, leading to heavy civilian casualties and the destruction of vital infrastructure. Explosive weapons are more likely to be used in densely populated zones with devastating consequences for the civilian population as was seen in Aleppo, Mosul and Raqqa.[35]

If this is the middle, the actual fighting, we continue to seek the ends through people in the battle of narratives. What prospects for the peace, happiness and prosperity in Syria that most ancient of civilizations?

So what is supposed to happen? Does any side have a monopoly of truth? We can take into account the truisms that 'the first casualty of war is truth' (see note 1) and famous suggestion of General Helmuth von Moltke (the Younger), that 'no plan of operations extends with any certainty beyond the first contact with the main hostile force', together with General Dwight Eisenhower's equally famous view that 'In preparing for battle I have always found that *plans* are useless, but *planning* is indispensable'. So, notwithstanding the opinion of the senior officer or politician in charge, in fact, reality and truth, what is next going to happen as an effect resultant on any formal and previous professional military effort?

6 But Are We Too Fixated on 'The Narrative'?

So in drawing this chapter towards an ending my final adumbration is about the agenda of those of us who observe political trends, international affairs, events and conflicts from an ethical viewpoint, which by definition is imaginative and idealistic. The dichotomies of individualism and corporate life, the

34 Arendt (n 4) 17–21.

35 ICRC (n 32) 14.

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past and the future, the well- interpreted historical accounts of war-fighting and violence and articulated hypothetical future intentions and plans, are far less clear than we imagine – shall we say in Anderson's underlying view. The supreme fact is that violence and wars continue to happen and are conducted by experimenting with causes and effects only to enable participants to discover new causes and effects.

In my view fixation on 'The Narrative' or 'narratives' can bring even more danger, with sometimes extreme cognitive dissonance for individuals, the governance and statecraft of nation-states and more generally, for humankind. The very term, 'The Narrative', or 'the narrative' can takes over as something in itself, or many narratives as things in themselves, parallel entity or entities alongside reality. In which case the narrative or narratives become facts not explanations, they become metaphors or analogies trying to describe reality. Metaphors cannot fight each other without losing a sense of reality and maybe reality itself. We too often assume there is a narrative when there isn't one, just one new set of things happening difficult to conceptualize and explain after other previously-occurring difficult things to explain, even after the event. There is danger too about short-hand simplification of causes and effects, as well as under-stated, softening euphemism.

I mention 'battle of narratives' above, factual or metaphorical. Professional military and political leaders use other terms, obviously 'policies' and 'plans', but also 'messaging', 'scenarios'(analogies borrowed from dramatic art), 'agendas' (partisan priorities), 'route-map'(metaphor from roads, land, sea and air geography), 'a journey' (a sort of geo-philosophical beginning-and-ending confection), and much effort is now being ascribed to a future world of scientific artificial intelligence 'algorithms' to achieve unemotional, impersonal, objective, artificial certainty. But is real 'certainty', a craving of humankind, the same thing as 'truth'? We have difficulty enough with truth in a 'post-truth' world. What is humankind coming to? Are we ourselves all merely becoming metaphorical and would-be algorithmic-biological entities?

The only reason for bringing this chapter to a culmination point on an indecisive note (also a musical metaphor) is to warn against treating the term 'the narrative' too literally and too symbolically. We should constantly bear in mind that it is at least a half-metaphor if not a complete metaphor when we discuss international relations, politics, violence and war-fighting, as well as trying to resolve the particular chaos of living and fighting in the density of urban settings. As everything in the future is likewise imagined, so urgently and ultimately is humankind dependent on the sum and quality of future human wisdom, capable of handling the difference between fact and reality, opinion and truth.

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7 Conclusions – Truth, Fact, Opinion and Reality?

… as a new chapter begins..[36]
ANTONY BLINKEN, US Secretary of State.

Signalling the occasional undeniable moment of truth, as suggested earlier, narratives can be simplistic, understatement and euphemistic, witness the above twitter description of the future viewed from Washington DC authorities during the escape of the West from Kabul in late August 2021, bringing to an end the experiment. Are there ramifications for the US's global resolve and say, for Taiwan's next chapter? What about the future for Ukraine and Russia?

Given the multiplicity of opinions and opinion-makers in the world, my concluding remarks are likely to be viewed as 'galloping relativism'.[37] I can only provide open-ended questions about what are facts, what is reality or actuality, and how can truth be so elusive. People value these generic ideas. But 'values', Stephen Lukes, political-sociologist of New York University, admits 'are subjective and inter-subjective'[38] across different communities. In essence values vary infinitely and are always subjective. Does this mean that truth equally varies?

What is 'truth' or 'The Truth'? Humankind, it is worth repeating, craves 'certainty'. Certainty tested for evidence in law and legal opinion is about the 'balance of probabilities', 'beyond reasonable doubt' or 'in good faith'. But when is such 'truth' merely the 'opinion' of the most powerful authorities (n 1), backed by force to become winners' justice? About truth as well as about facts and so-called reality, there is a constant 'battle of books',[39] agonized over by academics. Can truth be absolute? Where do you find the difference between truth and opinion? Does it reside in the converging culmination and affirmation of everything thought and done?

Facts, can they be absolute in human terms and human narratives, even if they are in cosmology? Even about physical facts there always seems to be

36 Antony Blinken, Twitter account 31 August 2021, quoted in *The Week*, 4 September 2021, 4.

37 Mary Warnock, *An Intelligent Person's Guide to Ethics* (Duckworth 1998) 117; see pages 13–4 and 112–18 for the problems.

38 Stephen Lukes, *Moral Relativism* (Picador 2008) 145.

39 As envisaged by Jonathan Swift, mentor to Gulliver in his *Travels* and inventor of the Yahoos. The literature is as extensive as is the urgency for certainty. Compare Donald P. Spence, *Narrative Truth and Historical Truth* (Norton 1982); Simon Blackburn *Truth* (Allan Lane 2005); Richard Rorty and Pascal Engel, *What's the Use of Truth?* (Columbia 2007); Michael Dummett, *Thought and Reality* (OUP 2006); David Bartholomew, *God, Chance and Purpose* (CUP 2008); and the views of Charles Peirce and William James summarized in A.C. Grayling, *The History of Philosophy* (Viking 2019) 330–331.

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degrees of subjective interpretation and much judgment. Science is imprecise. Can logic and rationality ever attain utter and lasting perfection in human events? War emphatically is about human beings with subjectivity writ large. Interventionist Armed forces' cannot be entirely objective, even if coldly applied to disarming violent people. In assessing armed violence or force during conflict, professional Intelligence Services' personnel do their best, as do professional agents of the 'free press', observing and writing narratives about truths, facts, opinions and realities.

Our enemy will always try to delude us in making wrong decisions – and often we do the same with him. His facts are not likely to be observed and interpreted for the same good and evil, right and wrong as we perceive even in the very same facts. His sense of reality, of realism, will be at variance with ours, deliberately or accidentally. So also will be the sense and rationality of all the different forward-narratives, and backward-looking historical-narratives of all the different conflict participants, including our people and no less we, of EuroISME, far-removed, facing the printed page or during our electronic bubble conferences.

Our present context in urban warfare is within the three-dimensional, condensed, teeming, chaotic urban sprawl, with so many more-or-less distressed people all with different opinions. In such contexts when everyone competes with facts and factors, realities and truths, we end up with simultaneous and mutual denials and counterfactuals, with realities and surrealities leading to physical and cognitive chaos, with or without leaders and authorities in local communities. Heightened in the intensity of conflict, what is utterly good to us, may be utterly evil to our adversary even if the temptation is not for annihilating, eliminating or obliterating all our enemies along the way to prove the supremacy of absolute power.

In his book on 'cooperation', Axelrod writes of 'a central authority' (n 10) for reducing and solving dangerous local and particular rivalries. How can we imagine a single, benign global 'authority' – alongside and above Anderson's notion about the 'imagined communities' of each nation-state (n 5) – capable of resolving the immediate and macro problems of the greatest 'realities' of all existential risks described by Ord in *Precipice* (n 17). Worth repeating, they included 'dystopian scenarios' of failure to control political order – say between Eastern and Western philosophy,[40] action and narratives about security and

40 The fundamental difference in Eastern and Western philosophy, and narration is well explained in Julian Baggini, *How the World Thinks* (Granta 2018) and Joseph Henrich, *The Weirdest People in the World* (Alan Lane 2020).

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freedom – and 'unaligned artificial intelligence' for lack of human'guardians'. But is there, can there be, a central, unified, global-human narrative faithful to future reality?

But given will and wisdom, such truths about conflict arguably can converge in the act of pacifying. 'A peace is of the nature of a conquest', suggests the narrator Shakespeare, 'For then both parties nobly are subdued and neither party loser'.[41] So as hope springs eternal, in warfare with so many individual and communities in conflict, the convergences and compromises of narratives, however difficult, is urgently desirable to achieve endings reaching out to all humankind. However it's a very tall order to find – beyond metaphor – a forward-narrative of all narratives, the truth of all truths, social, political, military, legal and in the realms of idealism, ethical.

41 In William Shakespeare's narrative of war in the reign of *Henry IV, Part II*, IV.2.89.

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CHAPTER 2

Enyo's Wrath

War and the Fate of the City

Srđan Starčević and Ilija Kajtez

Summary

The paper discusses the relationship between city and war, from antiquity to modern conflicts. The permanence of the connection was especially emphasized with the metamorphoses in the appearance of the city caused by the war were also recognized, as well as the restrictions that the city places on military power. Dependence of the commander's decisions on the specifics of urban warfare was considered. It was concluded that commander's decisions always fall into the plane that passes through three points: imperative of victory, principle of avoiding unnecessary risk and moral conscience. In most cases, commanders have to balance between them considering many factors – political, sociological, economic, psychological and ethical.

Keywords

war – siege – urban warfare – imperative of victory – unnecessary risk – moral conscience

1 Introduction[1]

Although urban warfare is often seen as a very important and extremely complex segment of modern warfare, which is a legacy of the modern age, it is true that the city and war have been closely linked since ancient times.

According to hitherto known archaeological evidence systematized by Marylene Patou-Mathis, the socio-economic changes that took place in the

1 This paper was written as a part of the scientific project 'Military in the political system of Serbia' of the Military Academy of the Defense University, financed by Republic of Serbia's MOD (Project number: VA-DH/1/19–21).

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Neolithic made *war* possible in the sense that the word has today.[2] Although struggles between people certainly existed before, the demographic situation of the human race during the Paleolithic did not allow frequent and long-lasting warfare. At that time, between five and ten million people lived on our planet, and the average size of human communities was 40 people.[3] During the Upper Paleolithic, only a few thousand people lived in entire Europe, according to estimates, in territorially dispersed, small groups. These groups probably had enough territory for hunting and gathering wild plants.[4] Also, as long as these groups were nomadic, they were not firmly attached to the territory. Instead of permanent settlement, the territory was temporarily used and then abandoned. That is why human communities were probably not ready to take too many risks in the crucial defense of the territory from a larger or better organized rival group. In addition, it is assumed that these groups were relatively homogeneous, which means that there was no stratification in these groups yet. The military resource, in its infancy, was dispersed in most cases to all adult men.[5] Therefore, it took permanent settlement and localized population growth, plant cultivation and the need for new arable land, then the development of metallurgy and trade, but also private property and class inequality, to create an elite that would keep and rely on warriors (or become a warrior caste itself) in order to maintain power and order and gain new territories, various resources and human labour force.[6]

The Neolithic transformation of the society led to the formation of civilizations that created first cities. About nine thousand years ago, first large villages were created in the Middle East, with several thousand inhabitants each. At the same time, tribes from Central Asia managed to tame horses and camels and discovered the wheel, which enabled them to descend on fertile Mesopotamia,

2 Marylene Patou-Mathis, *Prehistorie de la violence et da la guerre* (Odile Jacob 2013). Marylene Patou-Mathis, *Prehistory of violence and war* (Odile Jacob 2013).

3 Robert L. Karneiro, 'Politička ekspanzija kao izraz principa eliminacije kroz konkurenciju', in Čedomir Čupić (ed), *Politička antroplologija*, (Fakultet političkih nauka Univerziteta u Beogradu, Čigoja štampa 2002) 205–208. Robert L. Carneiro, 'Political expansion as an expression of the principle of elimination through exclusion' in Čedomir Čupić (ed), *Political antropology*, (Faculty of Political Science University in Belgrade, Čigoja štampa 2002) 205–208.

4 Marylene Patou-Mathis, *Le Sauvage et le Prehistorique, miroir de l'Homme occidental: De la malédiction de Cham à l'identité nationale* (Odile Jacob 2011). Marylene Patou-Mathis, *The Savage and the Prehistoric, Mirror of Western Man: From Cham's Curse to National Identity* (Odile Jacob 2011).

5 Ilija Kajtez, *Sociologija* (Vojna akademija Univerziteta odbrane u Beogradu, Medija centar Odbrana 2019) 447–460. Ilija Kajtez, Sociology (Military Academy University of Defence in Belgrade, Medija centar Odbrana 2019) 447–460.

6 Patou-Mathis (n 2).

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populous India and rich China as warlike plunderers and conquerors. Due to the need to defend themselves from the steppe horsemen, the villagers began to fortify their settlements. Thus appeared the first houses of brick and stone and the first stone walls around human settlements – the forerunners of the great ancient cities. Due to trade, those settlements were connected by roads along which completely new settlements were occasionally created. Large settlements were established in selected places, where people could engage in various activities that made the settlements relatively rich. Wealth, again, attracted attackers, so ramparts and warriors to defend the settlement were also required. Settlements that managed to develop their economy, organize a strong army and take advantage of their geographical position, developed into the first large cities. About five and a half thousand years ago, the first city-states were created in Mesopotamia, and afterwards civilizations with cities, ramparts, fortresses and armies appeared in the Mediterranean, China, Siberia, Central Asia and North India.[7]

Western civilization is based on Greco-Roman and Judeo-Christian heritage. All four elements from which our civilization arose have myths and legends about cities in their cultural heritage, and in their historical experience they have wars for cities. In ancient Greece, two myths about cities can be considered the foundations of this culture. The first is the myth of the 'Seven-Gated Thebes' in which many mythical stories are involved (e.g. the one about the abduction of Europe, Minos, Cadmus, Oedipus and Antigone, to name a few) and which contains the key (structural) elements of many later myths (genesis of the communities, incest, fratricide, etc.). According to the mythical tradition, city of Thebes was founded by Cadmus with people sprouting from the teeth of the Ares' dragon. After many plots, Thebes experienced a terrible war in which the quarreling brothers Polynicus and Eteocles, both claimed the right to the ruling throne in Thebes, were killed. Another fundamental ancient Greek myth is that of the siege of Troy, sung in the first masterpiece of Western civilization, Homer's *Iliad*. Ancient Rome – an empire that grew out of the power of the city of Rome – counted the time *ab urbe condita*. Jewish culture, with the religion as its key element, gave to Jerusalem the status of a holy city – since then Jerusalem can be understood as a symbol of religion.[8] Christianity, although traditionally distrustful of the city as a place of debauchery (the symbol of which is Babylon), can mostly thank the city for its spread; after all,

7 Žak Atali, *Kratka istorija budućnosti* (Arhipelag 2010) 26–29. Jacques Attali, *A brief history of the future* (Arhipelag 2010) 26–29.

8 Đuro Šušnjić, *Teorije kulture* (Zavod za udžbenike 2015) 303. Đuro Šušnjić, *Theories of culture* (Zavod za udžbenike 2015).

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it proclaimed Rome as the seat of St. Peter's successor, and Constantinople as the capital of the Ecumene, and started wars for the liberation of Jerusalem. All the mentioned cities in their legendary and / or historical duration experienced sieges and wars.

2 About the Relation between the City and the War

'From Homer onwards everything has been perfected, except poetry', said the Italian poet Leopardi.[9] It is certain that creator of the Iliad and Odyssey owes such a high assessment to his courage to express many universal truths about people and their activities through poetic and mythical weaving of words, which was appreciated by Socrates himself.[10] The poet's ability to express anthropological (scientific) truths in an aesthetically superior way is often subsumed under talent and inspiration, but it also largely belongs to the domain of intuitive knowledge. What does Homer tell us about the connection between war and the city?

In the Homeric tradition, the ancient Greek god of war Ares was ascribed the epithets 'sacker of cities', 'destroyer of city walls'. This cannot be explained by the poet's need to conjure up the danger of war that loomed over Troy, because Ares is really involved in the battles around Troy, but on the side of the Trojans: in the Iliad, the god of war does not tear down the city walls, but defends them. So, it must be that the poet had the idea of a deeper connection between war and (suffering) of the city, which is implied even when Ares is on the side of the attacked city.[11] After all, the ancient Greeks had several deities associated with war and war events, and among them the terrible goddess of war, Enyo, who was attributed to especially enjoy the bloodshed, siege and destruction of cities. She was called the destroyer of cities, and in some sources

9 Ghan Singh, *Leopardi and the Theory of Poetry* (University of Kentucky press 1964) 224.

10 Platon, 'Ijon ili o Ilijadi' in Platon, *Dela* (Dereta 2006) 11–19. Plato, 'Ion or on the Iliad' in Plato, *Works* (Dereta 2006) 11–19.

11 We will allow ourselves an interpretation to which the ancient Greeks were inclined to look at things up to Plato. According to this interpretation, the city would be the embodiment of construction, the light of life and the survival of man, and opposite it would be a war that annuls life, solid construction and every light of life. The walls of cities are the guardians of freedom, human duration and the meaning of construction. Homer's poetic weaving about the exclusive understanding of the city and war and their incompatibility and hostile disposition could be interpreted in that mythical and deeply intuitive, poetic way.

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she is the goddess 'that exemplifies the horror of destroyed cities.'[12] The very existence of such a deity speaks enough about the collective consciousness formed among the ancient Greeks about the connection between war and the city and the misfortune and suffering that war brings to the city. This awareness was strong, because the ruin of the city in the war was the same as the ruin of the state, the polis.[13] That is why the fight for the freedom of the city, for the defense of the city walls, was a very important, perhaps the most important, public interest and the cornerstone of the political superstructure of the ancient Greeks.[14]

Carl von Clausewitz in his strategic as well as philosophical observations of war[15] notes that fortified cities were created to protect the population from war. However, as often happens during the socio-historical development, the original purpose of the walls and towers – to fence and protect the city, and separate it from the war if it is possible – has lost its significance, because the city became a fortified point which, associated with throughout the country and its army, gained huge strategic importance.[16] The wars of the past are like a series of sieges[17] because states built fortification systems that determined the contours of war plans. The fortified cities were so important for the outcome

12 Srđan Starčević, Goran Vukadinović 'Military intervention as a form of war', in Goran Janjić (ed), *Impact of changes in operational environment on preparation and execution* (*design*) *of operations* (Military Academy Universiti of defence in Belgrade, Media centar Defence 2017) 309.

13 The polis occupied a central place in the political philosophy of the ancient Greeks. Even Aristotle, before whose eyes his student Alexander the Great created a huge empire, the world state, in his political observations considers the polis as the core of social and political life.

14 It was a struggle for the liberty of the polis, its independence from another state. Heraclitus warns that the freedom in the state that consists in respecting the law is also important: 'The people should fight for their laws as they would for their city walls.' Heraklit, *Fragmenti* (Bonart 2002) 55. Heraclitus, *Fragments* (Bonart 2002) 55 Yet from this wisdom one can understand the significance and vehemence of the struggle for the city walls.

15 Ilija Kajtez, *Wisdom and Sword, volume II, Philosophers of the New Age on the Riddles of War and Peace* (LAP Lambert Academic Publishing 2017) 158–202.

16 Karl fon Klauzevic, *O ratu* (Vojno delo 1951) 332. Carl von Clausewitz, *On War* (Vojno delo 1951) 332 However, cities will be of utmost strategic importance in all forms of contemporary conflicts. In the last four decades of of the 20th century, the population of cities around the globe increased by 1,4 billion, and is still growing. The urban population is growing much faster than the total world population. According to the United Nations by 2025, 63 percent of the world's population will live in urban areas. Entoni Gidens, *Sociologija* (Ekonomski fakultet u Beogradu 2006) 585. Anthony Giddens, *Sociology* (Faculty of Economics in Belgrade 2006) 585.

17 Erl, *Tvorci moderne strategije* (Vojno delo 1952) 42. Earl, *Creators of Modern Strategy* (Vojno delo 1952) 42.

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of the war, that the armies tried to capture them rather than defeat the enemy army.[18]

In the modern era, two major changes in the equipment and organization of the army influenced the metamorphoses of the fortified city. The first was the use of siege artillery, which, with its destructive power, made the high medieval city walls meaningless. The metamorphosis of the city that it caused consisted in the discovery of a new fortified belt (*enceinte*) – an invention of Italian master builders – which, perfected and modified, remained significant until the first decades of the 19th century.[19] The builders of large fortress systems had to acquire considerable technical knowledge, so many great scientists dedicated themselves to fortification, including Galileo Galilei.

Another change concerns the change in the size and organization of the army. While even small towns could withstand the action of the small armies of knights or relatively small mercenary armies for a long time if they were fortified, the appearance of a large standing army, equipped with artillery and capable of long sieges, made the resistance of small fortified towns meaningless. Due to limited supplies and a small number of crews, small fortifications could withstand a superior attacker for only a few weeks, and their fall after a bitter fight could cost the residents and defenders dearly. Instead of resisting, these towns preferred to surrender. The metamorphosis caused by this change consists in a decrease in the number of fortified towns and a change in the role of large fortified cities. The battles were fought on maneuvering ground, but large fortified cities, became 'knots which hold together the strategic web'.[20] But the one who realized the true value of fortified cities in the wars of the 19th century was Antoine-Henri Jomini. Although Clausewitz also noticed that large cities always go along with important roads, large rivers and the seacoast, and that large fortress are built for large cities in the plains,[21] his thoughts on

18 Klauzevic (n 16).

19 Erl (n 16) 38 'Many of the trends mentioned above, especially in the technical improvement of artillery … led to improvements in the science of fortification that were radical enough to be known … as the 'New Dutch System'. The result was the building of urban fortifications that are arguably the most architecturally dramatic, technically complex and aesthetically satisfying in the history of military engineering …' G. J. Ashworth, *War and the city* (Routledge 2003) 34.

20 Klauzevic (n 16). The failure of the original Russian plan in the war with Napoleon in 1812, drawn up by general Phull who envisaged a retreat to the fortified Drisa where a decisive battle would be accepted, clearly proved that the fortified camps, especially when they relied on small settlements, are poor choice in large operations. Evgenij Tarle, *Napoleonova najezda na Rusiju* (Državni izdavački zavod Jugoslavije 1945) 68–72. Evgenij Tarle, *Napoleon's invasion of Russia* (Državni izdavački zavod Jugoslavije 1945) 68–72.

21 Klauzevic (n 16) 339.

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absolute war led him to the logical conclusion that the destruction of the enemy army was what determined the result of the war. In Jomini's doctrine, in which bases of operations, lines and directions of operations and strategic points are the key to success on the way to achieving a war goal, military operations are nailed to the field of operations and they are largely determined by it. Such a doctrine recognizes great importance of large cities. Combining the idea of a commander in chief, his ideas and imagination, fluid in nature, with something relatively solid and static such as a field of operations with its geographical and topographical characteristics, Jomini's doctrine allows us to understand that there are objective reasons why the city is a permanent part of the theatre of war. Indeed, there is little difference between claim that Luxembourg is one of the strongest places in Europe[22] – made by Sebastien le Prestre de Vauban in the 17th century – and Jomini's observations about Leipzig as a strategic point which, if the city were still fortified on both banks of the river, would be the key to Germany – written in the middle of the 19th century.[23] In addition to geographical, he also notices economic, demographic and moral factors due to which it is better to fortify large cities than small ones.[24]

The fortified cities, with many technical changes and expansions of the fortification system, remained important in the World War I, although the fronts stretched for hundreds of kilometers: it is enough to remember Verdun.[25] 'Fortified cities were incorporated into a broader idea of the national redoubt …'.[26] The great transformation of the urban warfare took place in the World War II. From the 'Seven Gated' Thebes to Verdun, the battle for the city was fought around the city, on the city walls and fortified positions. The penetration of the enemy army into the city most often meant the fall of the city into the hands of the enemy. This meant that the main defense forces were defeated. The remnants of the defense were dispersed, and their resistance was sporadic and insufficient. The city would be left at the mercy of the conqueror and his often predatory army. In general, resistance within the city was not the part of the interstate war, bat part of the revolutions or civil wars.[27] Street fights

22 Erl (n 17), 43, 54.

23 Žomini, *Pregled ratne veštine* (Vojno delo 1952) 105. Jomini, *The Art of War* (Vojno delo 1952) 105.

24 Žomini (n 23) 164 Jomini states that Metz kept the complete army of Charles V and that Lille postponed the operations of Eugene of Savoy and Marlborough for one year.

25 John Mosier, *Verdun: the lost history of the most important battle of World War I, 1914–1918* (NAL Caliber Penguin Group 2013) 83–88.

26 Ashworth (n 19) 49.

27 Srđan Starčević, *Revolucija i legitimnost* (Čigoja 2020) 177. Srđan Starčević, *Revolution and legitimacy* (Čigoja 2020) 177. Ashworth (n 19) 114–115.

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between the two armies are a rarity in the history of warfare before the World War II. However, during this war, the interior of the city became the field of war operations and actions in which the strength of the attackers could be broken. Stalingrad could be considered as a symbol of this turning point.[28] Of course, the great strategic movements of large military units remained outside the city, on a terrain more suitable for the maneuvering. However, with the World War II experiences, it could be said that the urban warfare became a bloody and exhausting fight for a large number of separate strongpoints. The price of the high possibilities of such defense was paid by both belligerent armies, but also by a large number of civilians. Also, the World War II showed the ugly face of technological progress, in the suffering of Hiroshima and Nagasaki.

One of the hallmarks of the Aftermath of World War II is the expansion of cities. In the past, cities occupied a relatively small area, and a small part of the world population lived in them. Thus, Babylon occupied a little more than five square kilometres, and Rome at the time of Augustus had about three hundred thousand inhabitants. The modern world has so-called global cities, some of which have more than twenty million inhabitants, and there are also urban agglomerations, such as the one in the United States that stretches from Boston to Washington.[29] There are huge, densely populated cities in both underdeveloped and transition countries. Although modern cities do not have city walls and often they do not have clear borders – Paul Virilio asks: 'Where does a city without a gate begin?'[30] – they did not escape Enyo's wrath. Answer to the question of where the fighting took place in the wars in Libya, Iraq and Syria, in the 21st century (e.g. Sirte, Tripoli, Brega, Misrata, Benghazi, Baghdad, Fallujah, Damascus, Aleppo, Raqqa, Bosra, Rastan, Homs, Hama, Deir ez-Zor, Latakia) is

28 Having been given the task of defending Stalingrad from a much larger enemy at all costs, the 62nd Soviet Army prepared the city for persistent defence, using suburbs, workers' settlements, factories, workshops, water towers, railways, sewers, city telephone lines, and so on. The basic principle of Soviet defence in the city was the organization of strongholds with several strongpoints. For the strongpoints, buildings made of hard material were used. These strongpoints were connected by trenches and roads, and the interspaces were closed with obstacles and covered with fire. Streets and squares were blocked by obstacles and covered with fire from neighboring buildings. The defence was active, and the counter-attacks were organized mostly at night. Jovo Vukotić (ed.) *Drugi svetski rat, II knjiga* (Vojnoistorijski institut 1961) 410–462. Jovo Vukotić (ed.) *World War II, Book II* (Vojnoistorijski institut 1961) 410–462 In 1945, the German army similarly prepared Berlin for defence, including the use of specially made tunnels. Jovan Vujošević (ed.) *Drugi svetski rat, V knjiga* (Vojnoistorijski institut 1970) 170–203. Jovan Vujošević (ed.) *World War II, Book V* (Vojnoistorijski institut 1970) 170–203.

29 Entoni Gidens, *Sociologija* (CID 2001) 291–304 Entoni Gidens, *Sociology* (CID 2001) 291–304.

30 Pol Virilio, *Kritični prostor* (Gradac 2011) 14 Pol Virilio, *Critical space* (Gradac 2011) 14.

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adequate to conclude that the suffering of the cities is still a favorite of the gods of war. Not only in long, exhausting wars, but also in technologically guided instant wars[31] the city's infrastructure, with inevitable human casualties, is under military attack.[32] Large cities and global cities occasionally become war zones, in an asymmetric war – terrorist attacks that can be considered as the reverse of war cut through the hectic life of modern man in a liquid-modern society of consumers.[33] It is already well known that the targets of terrorists, affected by what was called War on Terror, were not only the cities involved in the war conflict (e.g. Baghdad or Mosul) but also the cities of the countries that did not participate in war operations (e.g. Casablanca, Mumbai or Jakarta).[34] 'Cities worldwide are becoming a key theater for asymmetric war, regardless of what side of the divide they are on – allies or enemies.'[35] In asymmetric wars, large maneuvering areas outside the cities remain outside the field of strategy, now concentrated inside the cities. In hybrid[36] and network[37] wars, this becomes even more pronounced: a target inside the city is easier to be reached by the rebels or terrorists than a military base, battleship or military aircraft, and for those who rely on media manipulation, social networks, civil society organizations, opinion leaders, color revolutions, criminal organizations and corruption networks, the city is a lone theater of war.

There is, however, a significant change in the destructive attitude of war towards the city. Today, there is no political and war leader who would condemn a city to complete destruction. Urban space is used in a different way to make political demands or to realize political and economic interests. The rise of the ideology of human rights did not decisively influenced the abandonment of the destruction of cities, which would be easier to achieve with

31 Manuel Kastels, *Uspon umreženog društva* (Službeni glasnik 2018) 625–633 Manuel Castells, *The Rise of the Network Society* (Službeni glasnik 2018) 625–633.

32 Dragan Stanar, *Pravedan rat, između apologije i obuzdavanja rata* (Dobrotoljublje 2019) 68–69 Dragan Stanar, *A just war, between apology and restraint of war* (Dobrotoljublje 2019) 68–69.

33 Zigmunt Bauman, *Fluidni strah* (Mediterran publishing 2010) 120–143. Zygmunt Bauman, *Liquid Fear* (Mediterran publishing 2010) 120–143 Zigmunt Bauman, *Fluidni život* (Mediterran publishing 2009) 60–61 Zygmunt Bauman, *Liquid life* (Mediterran publishing 2009) 60–61.

34 Saskia Sassen, 'When the City Itself Becomes a Technology of War' (2010) 27 (6), *Theory, Culture & Society* 33–50.

35 *Ibid.* 36.

36 David J. Kilcullen, 'The City as a System: Future Conflict and Urban Resilience' (2012) 32 (2), *The Fletcher Forum of World Affairs* 19–39.

37 Aleksandar Dugin, Leonid Savin, *Mrežni ratovi* (Avala pres, 2018). Aleksandar Dugin, Leonid Savin, *Network wars* (Avala pres 2018).

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modern war technology than ever in history. But the increase in the political and moral cost of such an act did.[38] Thus, it turned out that the city, in the modern social context, shows us the limits of power.[39] We hope that this is not temporary achievement, although there are not too many arguments for optimism: who can say what the potential biological or even nuclear terrorism of the future will look like?

Summarizing the historical and technological processes that influenced the relationship between war and the city, Ashworth concludes that an equilibrium has always been maintained between the vulnerability of the city and its ability to defend itself.[40]

There are many reasons why it is important to take or defend a city in war. The first, perhaps the most obvious of these reasons is the geographical position of the city. Cities are springing up in places that are destined by their position to be crossroads: places where people meet. They grow because the entire provinces, and sometimes entire states, gravitate toward them. They thrive on soil that allows them to flourish demographically and develop economically. Control of a city often means the control of an important trade route, a rich province, or even a state.[41]

Another reason is the fact that the city is a munificent source of various resources. Cities are economic and financial centers. Due to the large number of inhabitants and branched economy, they contain large stocks of all necessities and large amounts of money, as well as human resources that can

38 'The US could have pulverized Baghdad and Israel could have pulverized Gaza. But they didn't. It seems to me that the reason was not respect for life or the fact that the intentional killing of civilians is illegal according to international law – they do this all the time. Rather, I would posit that pulverizing a city is a specific type of crime, one which causes a horror that people dying from malaria does not. The mix of people and buildings – in a way, the civic – has the capacity to temper destruction, not to stop it, but to temper it. We let millions die worldwide from diseases that can easily be cured at low cost. So it is not the death of human beings as such. It is people in the context of the city, and the fact of witnesses – a sticky web of constraints consisting of a mix of law, reciprocal agreements, and the informal global court of public opinion.' Sassen (n 34) 36.

39 Sassen (n 34) 43.

40 Ashworth (n 19) 110–111.

41 Vinko Žnidaršič, 'Uticaj oblika putne mreže na pripreme vojnih operacija u gradskim naseljima', Zoran Gradić, Gordana Topličić-Ćurčić (ed) *IV Međunarodni simpozijum studenata doktorskih studija iz oblasti građevinarstva, arhitekture i zaštite životne sredine* (Građevinsko-arhitektonski fakultet Niš, 2012) 25–31. Vinko Žnidaršič, 'Influence of the shape of the road network in the preparation of the military operations in urban areas', Zoran Gradić, Gordana Topličić-Ćurčić (ed) *IV International symposium of doctoral students in the field of civil engineering, architecture and environmental protection* (Građevinsko-arhitektonski fakultet Niš, 2012) 25–31.

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significantly affect the result of the war or at least the result of operations that take place in and around the city.[42]

The city can then be treated as loot and as such has often been calculatedly used to motivate soldiers to endure war efforts and share the risk of death with their military leaders or as a reward for success. From Troy to Aleppo, the Greeks, Romans, barbarian peoples, Muhammad's followers, Christian knights, Italian *condottieri*, Spanish conquistadors, soldiers of the French Revolution, Prussian soldiers, paramilitary formations of all colors, plundered the conquered cities, with the approval or tacit consent of their commanders.

Fourth, the city can be significant in war because it has the status of a symbol. Capital cities often have such potential[43] or old capitals,[44] but also other cities can have it on some occasions.[45]

Since it is a symbol of the greatness, since it proudly shows architectural buildings that are also the symbols of power, and at the same time is densely populated, the large city is a suitable target of terrorism. By destroying the symbols of the power of the superior force, causing the suffering of a large number of people, spreading fear and panic among other residents and gaining media attention, the terrorists are achieving their goals.[46]

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42 Ashworth (n 19) 88.

43 For example, the fall of Rome 410 and 476 had great symbolic and practical impact in the Western Roman Empire. Also, the fall of Constantinople in 1453 had it in Byzantium. 'Augustine's most significant work *The City of God* (*De Civitas Dei* lat.) was written between 413 and 426. Gothic invasion and devastation of Rome in 410 directly caused the writing of this book. Augustine consoles Christians and finds an excuse for Rome's defeat, and claims that the Goths will later suffer for their misdeeds, because if all sins were to be punished on Earth, there would be no need for Judgment Day. Christian suffering will transform, if they are moral, into spiritual sublimity, because earthly things have no value for the saints.' Ilija Kajtez, *Wisdom and Sword, volume 1, Ancient and Medieval Philosophers on the Secrets of War and Peace* (LAP Lambert Academic Publishing 2016) 345.

44 For example, in the war of 1812, Napoleon thought that the capture of Moscow, the ancient capital of Russia, the heart of the Russian land, would resonate with Russia in such a way that it would force Tsar Alexander I to sign peace. Leningrad played a similar role in World War II.

45 'When Pétain observed that Verdun was the *boulevard moral* of France, he meant that it was a physical place that summed up all of the country's spiritual and intellectual qualities, embodied all of the country's mental faculties, its intellectual state of mind.' John Mosier, *Verdun: the lost history of the most important battle of World War I, 1914–1918* (NAL Caliber Penguin Group 2013) 91 For the Soviet Union, such a place in World War II was Stalingrad, named after the leader of the Soviet Union.

46 H. V. Savitch, *Cities in a Time of Terror* (M.E. Sharpe 2008) 26–63. Jon Coaffee, *Terrorism, Risk and the Global City* (Ashgate 2009) 65–90. Erik Hobsbaum, *Globalizacija, demokratija i terorizam* (Arhipelag 2008) 117–132. Eric Hobsbaum, Globalisation, Democracy and Terrorism (Arhipelag 2008) 117–132.

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Then, the defense capabilities in the city have always been significant. Technical knowledge and solutions, the ability to store significant supplies, reliance on the local population (when possible) have always provided good opportunities for weaker forces, with their tactics and fortifications, to retain or defeat superior enemy.[47]

Last but not least, the large city has become a suitable place to hide. Despite the different types of surveillance and gloomy predictions of cities where every movement and electronic correspondence or payments of every citizen will be recorded and monitored, the metropolis has shown that people can still enjoy anonymity and thus avoid bad consequences of their previous decision and committed acts.[48]

However, the city can be considered also as a great challenge for armed forces, for several reasons. It can have a restraining effect on military actions.

First of all, it has the potential to destroy the invading army, not only as a defended system of well-established strongpoints. Tolstoy's view that the plunder of Moscow destroyed Napoleon's army is well known: *Grande Armée* marched on Moscow, but disintegrated in it, because the plunder aroused selfish impulses in the soldiers and destroyed the discipline of the units.[49] The city can also shake and decimate its own army: for example, during the withdrawal of the Serbian Army in the First World War, in 1915, regiments that passed through Niš, a relatively large city in southern Serbia, where shoes, suits, fur coats and blankets from warehouses and hospitals were given to soldiers, had a large number of deserters (who sold the obtained goods), while those who bypassed Niš and moved on rural roads withdrew with discipline.[50] The city, with its symbols, shops, taverns, women's tears and women's kisses, attracts

47 There are numerous examples of successful defence of cities made by numerically and technically weaker forces. For example, learning lessons from the failure of the Russian Armed Forces in the war in Chechnya, the Yugoslav Army recognized that the basic content of the Russian Federation's combat operations was anti-infantry fighting in populated areas. The Russian army engaged armored and mechanized units with the support of artillery. But the strength of military technology could not break the weaker forces of the Chechen rebels. *Iskustva i pouke iz rata u Čečeniji* (General Staff of the Yugoslav Armed Forces 1996) 12–15. *Experiences and lessons learned from the war in Chechnya* (1996) 12–15.

48 Perhaps the best example of this is the long hiding of Bosnian Serb wartime leader Radovan Karadžić as doctor Dragan Dabić in Belgrade.

49 Lav Tolstoj, Rati i mir, IV (Prosveta 1974) 380–381. Leo Tolstoy, *War and Peace, IV* (Prosveta 1974), 380–381.

50 Boban Đorđević (ed.) *Историја 20. пешадијског пука 1914–1920* (Matična biblioteka Svetozar Marković 2018) 84–85. Boban Đorđević (ed.) *History of the 20th infantry regiment 1914–1920* (Matična biblioteka Svetozar Marković 2018) 84–85.

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and tempts soldiers, and we must not underestimate the anonymity and opportunities for work and survival that the city provides.

Secondly, with its archeological remains, old buildings and bridges, museums, galleries, libraries and places of worship, the city is a collection of cultural treasures: a great museum of human achievements. *Jus in bello* protects this treasure, although modern war technology can destroy it irretrievably. Norms arouse old dilemmas. How many of his own soldiers can an attacker allow himself to lose, so as not to desecrate the cultural treasures of the enemy?[51] To what extent the world's cultural heritage needs to be misused in order to be justifiably (sic!) erased from the face of the earth? What is the nexus between the respect for the enemy's culture in war and the permanence of the peace with which the war will end?[52]

Third and, it seems to us, the most important reason, the city is a space where civilians live. Nothing restrain modern warfare as much (if the conventions of war law are respected) as civilians in cities. An army can relatively easily adapt to urban warfare. Most soldiers in modern armed forces grew up in cities; for them, the city is a natural environment.[53] Tactical rules will easily recognize boulevards as gorges, squares as cleared spaces, architectural confusion of the suburbs as forests, and so on. But the real problem for military action is the fact that civilians live in cities. Surely, they are not legitimate military targets and their suffering cannot be justified by the success of military action, despite the doctrine of double effect and collateral damage.[54] 'Thus the presence of civilians on the battlefield at the best imposes constraints on the conduct of that battle and at worst leads to a breakdown in the military/

51 History remembers commanders in chief who ruthlessly spent the lives of their soldiers. Such a view is unacceptable in modern democratic societies. Commenting on Napoleon's performances in the war, Wellington said that he personally should never have risked so much, because he knew that if he ever lost five hundred soldiers unnecessarily, he would be on his knees before the Lower house of Parliament. Pol Džonson, *Napoleon* (Laguna 2007) 58. Paul Johnson, *Napoleon* (Laguna 2007) 58.

52 In the battle for Jerusalem, the Israeli air force fired on Jordanian forces near the city, but could not support Israeli forces in the old city, because it was out of the question to demolish its own shrines. Ashworth (n 18) 119. But the Islamic State relentlessly demolished the remains of ancient cities.

53 It was once considered that the inhabitants of large cities were worse soldiers than the peasants, and it took a great deal of skill on the part of the commander to use them successfully in battle. But industrialization and urbanisation have made the peasantry no longer a large class in developed countries. Gidens (n 28) 167.

54 Stanar (n 32) 74–75.

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civilian distinction, which increases both the hardships suffered by the inhabitants and the difficulties faced by the military.'[55]

The fact is that even in instant wars, in which weapons are used with great precision, the population of large cities is exposed to perilous dangers and great suffering. However, studies have shown that neither war destruction[56] nor terrorism, had a negative impact on the of city growth,[57] except in extreme cases when the state disappeared and the city was destroyed and abandoned.[58]

Tears of Marcus Marcellus – between the imperatives of victory, avoiding unnecessary risk and moral conscience.

According to some Roman sources, after the Roman army conquered and plundered Syracuse after a long siege, which Archimedes' technical inventions made very difficult for the Romans, the Roman general Marcus Claudius Marcellus was sad and even wept over the fate of such a city and its genius Archimedes.[59] Based on some other sources, less inclined to Marcus Marcellus, it can be claimed that Plutarch embellished the truth, trying to diminish responsibility of Marcellus for the crimes committed in the city.[60] If this second interpretation is correct, the tears of the victorious general are intended

55 Ashworth (n 19) 120.

56 D. R. Davis, D. E. Weinstein, 'Bones, Bombs and Break Points: The Geography of Economic Activity' (2002) 92 *American Economic Review* 1269–1289.

57 Edward L. Glaeser, Jesse M. Shapiro, 'Cities and Warfare: The Impact of Terrorism on Urban Form' (2002) 51 *Journal of Urban Economics* 205–224.

58 There had been many badly damaged cities that were being repopulated and developed after the wars. For example, Alexander the Great, having conquered Gaza after the siege in 332 BC, killed its male inhabitants who defended themselves to the last, and sold their wives and children into slavery, but the city was repopulated by the inhabitants of the surrounding areas and kept as a fortress. Flavije Arijan, *Pohod Aleksandra Velikog* (Dereta 2015) 116. Flavius Arrian, *The campaigns of Alexander the Great* (Dereta 2015) 116. At the same time, the example of the 'hypocritical Tire' and the disobedient Gaza, strongly influenced the dynamics of his campaign. The sieges required the army to spend a long time in one place, and Alexander's ambition required great dynamism. After the suffering of the two cities mentioned, the rest of the cities in Persian Empire surrendered to Alexander, so his army did not waste time on sieges. More than two thousand years later, we find that in Allied air operations in Germany in 1944 and 1945, when large industrial cities were bombed, more than 3.5 million houses and apartments were destroyed, or about 20% of all houses and apartments. Zdenko Ulepič, *Ratno vazduhoplovstvo u Drugom svetskom ratu* (Vojnoizdavački zavod 1974) 287. Zdenko Ulepič, *Air Force in World War II* (Vojnoizdavački zavod 1974) 287. However, after the war, the cities experienced renewal and development.

59 Loretana de Libero, 'Precibus ac lacrimus: Tears in Roman Historiographers' in Thorsten Fögen (ed.) *Tears in the Graeco Roman World* (W. De Gruyther 2009) 209–234.

60 Mary Jaeger, *Archimedes and the Roman Imagination* (The University of Michigan Press 2008) 85–86.

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to purify: Marcellus sheds them because he is powerless to prevent the plunder and destruction of the city and the suffering of the city's population associated with them. As an experienced military leader, Marcellus had to know the consequences of his victory, and despite that knowledge, he chose what is expected of a military leader – to win.

Let us now consider one defensive situation. During Napoleon's campaign in Germany in 1813, Marshal Louis-Nicolas Davout was given the task of recapturing and defending Hamburg. Napoleon estimated that it would take ten years of work and 40 million francs to prepare the city for defence, but he still entrusted this important task to his marshal. Davout captured Hamburg in May 1813.[61] Until the winter he led an active defense against the Prussian general Walmoden. In early December 1813, the marshal found himself with his army in a German city (so he could not count on the defensive enthusiasm of the inhabitants), surrounded by a numerically superior Russian army under general Bennigsen, which would later be joined by the Swedish army. However, Davout managed to repel three heavy attacks in February and to seize valuable supplies from the enemy by a sudden attack. He defended Hamburg so well that he refused to negotiate surrender, even when the Russians informed him of Napoleon's abdication. He agreed to evacuate his troops from Hamburg in an almost triumphal procession only when a representative of the French king asked him to do so, in May 1814. Marshal preserved the reputation of the general undefeated on the battlefield, his army preserved the honor and glory, but what was the price paid by Hamburg?

'Davout destroyed suburbs to improve fields of fire, expelled 25,000 useless mouths from the city, and repeatedly had the ice broken to preserve his water defenses, but the weather swelled his sic returns alarmingly.'[62] Seen through the eyes of modern man, Davout's decision to demolish the city's suburbs (and thus leave a large number of civilians homeless) in order to allow French artillery to successfully target the advancing columns of the enemy, is certainly condemnable. And what to say about his decision to expel 25,000 civilians from the city because they were of no use to him in defending the city, but useless mouths that would consume the food reserves needed by his soldiers during the long months of the siege? Such actions would take a modern commander – especially if he fought on the defeated side – to a war crimes tribunal. Davout,

61 Charles Esdaile, *Napoleon's Wars, An International History, 1803–1815* (Penguin Group 2007) 499.

62 David G. Chandler, 'Davout, The Iron Marshal' in David Chandler (ed.) *Napoleon's Marshals* (Cassell 2000) 92–117.

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renowned for being victorious at Auerstädt (1806) and Eckmühl (1809), apparently acted under the imperative of victory this time as well.

The following facts illustrates Davout's care for the soldiers: at the beginning of Hamburg's active defense, in June 1813, there were 34,000 soldiers under his command and another 8,000 sick and wounded; the city was first besieged by 25,000 Prussian and then 60,000 Russian soldiers (in mid-January they were joined by the Swedish army and the number of soldiers besieging Hamburg rose to 120,000); when Davout evacuated troops from Hamburg, he had 26,000 healthy soldiers and 5,000 wounded and sick. So, in a little less than a year of active defence, he lost about 11,000 soldiers (for comparison, in the same war in the battle of Dresden, the French lost 10,000 soldiers, and in the battle of Leipzig as many as 68,000, of which 30,000 were captured).[63] But judging by the losses he was willing to endure to win at Auerstädt (about 7,000 of his soldiers were killed or wounded, or about 40% of the total number of his corps), Davout put victory in battle ahead of risking the soldiers' lives.[64]

It remains to examine Davout's moral consciousness. Marshal Marmont claims in his *Memoirs* that during the operations in 1809, when Davout was in charge of the forces on the island of Lobau, Davout showed all his savage strictness. Namely, the marshal forbade the local population to enter the French military camp with the threat of hanging, and the French army under his command did hang civilians, accused of being spies.[65] Marshal Gouvion St.-Cyr also had a bad opinion of him. In 'War and Peace', Tolstoy also gives an extremely unfavorable description of Marshal Davout, as a stern and rigid man. Davout was really strict. A similar description was also given by the duchess of Saxe-Coburg-Saalfeld.[66] 'I can assure you that to serve under him is a truly serious matter', claimed a senior officer from Davout's corps.[67] But the fact is that Davout's strictness guaranteed the high discipline of his army. At the time when the armies were ruthlessly plundering, it was noted that poultry from the surrounding villages roamed freely in the camps of his regiments, and that it never occurred to any of the soldiers to 'please' their stomachs by

63 David G. Chandler, *Napoleon* (Leo Cooper 2002) 129, 132. David G. Chandler, *Dictionary of the Napoleonic Wars* (Wordsworth editions 1999) 116, 191–192. Chandler (n 62) 104–105.

64 But after the battle he despised Marshal Bernadotte who did not come to his aid. For him, Bernadotte, Prince de Ponte-Corvo, has since become the miserable Ponte-Corvo. Chandler (n 62) 109.

65 Maršal Marmont, *Memoari* (Logos 1984) 150. Marshal Marmont, *Memoirs* (Logos 1984) 150.

66 Chandler (n 63) 108.

67 *Ibid.* 99.

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stealing.[68] As governor of the conquered provinces, Davout gained a reputation as an incorruptible and just man. And when a list of officers to be tried for treason was published during the restoration, Davout was 'gallantly offered himself as a substitute for four proscribed generals for whose actions in Vandée and the south he took full responsibility. '[69] Such a man, however, cannot be said to have had no moral consciousness.

Summarizing the above considerations about the siege of Hamburg in 1814, it could be said that Marshal Davout was in the position in which Marcellus was, only he defended, and Marcellus attacked the city. Both made their decisions under the imperative of victory, both introduced their soldiers to the risks they considered necessary for victory, and both could mourn the suffering of the city (the difference is that Davout did not shed tears), but they gave preference to victory over moral purity. However, in both cases military leaders who potentially had moral dilemmas regarding the suffering of the population did not belong to the local community. 'If the Emperor told Maret [Minister of Foreign Affairs] and myself to destroy Paris and everyone in it, Maret would keep the secret, but warn his family. I would not even warn my family for fear the secret might leak out', once said Davout.[70] However, whether Davout would really destroy Paris or sacrifice the lives of Parisians during the siege, as he did in Hamburg, cannot be said with certainty.

In World War II, during the Berlin operation, which lasted a little over three weeks, the Red Army captured Berlin in a few days (from April 26 to May 2, 1945), with heavy losses (about 300,000 killed, wounded and missing). The number of killed soldiers would certainly have been higher, and the time needed for the success of the operation would have been longer if the Red Army had not applied tactics that, from the aspect of the inhabitants of Berlin and the city itself, could be called cruel. 'Artillery played a significant role in the successful attack in street fights. It was grouped so as to ensure the passage of infantry and tanks through demolished buildings and barricaded streets. For that purpose, army and corps groups for demolition were formed, and all the artillery of the regiments was used to secure the action of the assault groups and detachments. In that way, the artillery cleared the way for infantry and tanks.'[71] In the same war, a decision to use the atomic bombs was made. The devastating consequences and non-discriminatory effects were justified by the

68 *Ibid.* 109.
69 *Ibid.* 107.
70 *Ibid.* 109.
71 Vujošević (n 28) 203.

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number of casualties that the United States would have to suffer in the fight against Japan if US did not use its new weapon.[72]

The wars that have taken place in the last few decades also provide examples of strong influence of the imperative of victory on commander decisions that cannot find moral justification, although they have not been as devastating to the city as those of World War II. In the bombing of Belgrade, for example, NATO hit the Serbian Radio and Television, the heating plant in New Belgrade, the Embassy of the People's Republic of China, the Surčin civil airport, the Dragiša Mišović hospital, several transformer stations, etc. Civilians, including journalists, the sick people and children were killed in the attacks. On the other hand, the fact that NATO had no human losses enabled the members of the Alliance to win a media victory in their countries.[73] In civil wars, such as those in Libya and Syria, the suffering of civilians in cities is even greater, but military forces of all colors are trying to conquer or defend and control cities, because their importance is great.

3 Conclusion

The wars of the past and the armed conflicts of the modern age both testified that war and the city have been chained with unbreakable chains. Throughout history, the city has developed its capabilities for successful defense, but it remained an important strategic point and an inevitable part of war plans. That is why military power was constantly improving the ability to take control of the city. In this particular competition, the architecture of the city is being changed, but, in a special social context after the World War II, a significant change in the war itself appeared. While in past wars the main operations were conducted in maneuvering area, the modern war is tied to the city as its main theater. This is particularly characteristic of asymmetric and hybrid wars and is likely to be characteristic of the instant wars of the future. However, in past wars, cities were destroyed, while in modern wars, the city often suffers, but does not experience the fate of Carthage in the Punic Wars or Hiroshima, Nagasaki and Dresden in World War II.

A military commander who is in a situation to defend positions in the city or attack an enemy army deployed in the city (densely populated by civilians, with cultural monuments, hospitals, etc.) makes his decisions by solving a great

72 Although the situation in which the United States was, did not constitute an extreme necessity. Stanar (n 32) 277–278.

73 Kastels (n 31) 28.

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ethical problem. First, the victory, as a vital interest in war, is his finish line. Apart from being a public, political interest, victory has a special status in the value system of a military and also a decisive influence on the reputation of a military leader. In short, victory contributes to the political power of the state, contributes to the glory and honor of the soldiers as well as the reputation and the material status of the military leader, so it should come as no surprise that what can be called *imperative of victory* is crucial for people educated in a system that glorify loyalty to the state and honor. Second, the military leader has the responsibility for his subordinate officers and soldiers, which is why his decisions are subject to the principle of avoiding unnecessary risk. In short, if he can choose such a sequence of events that will guarantee him victory with the least losses, the military leader will be inclined to make such a decision. And, thirdly, the military leader as a moral man, who has adopted the appropriate military ethos and who is obliged to respect the provisions of international humanitarian law, has to make an endeavor do not cause the death or suffering of innocent civilians.

The decisions made by a war commander always fall into the plane determined by these three points: the imperative of victory, the principle of avoiding unnecessary risk and moral conscience. Which of them it will be closer to (sometimes it can coincide with only one of them), depends on many factors, of which political, sociological, economic, psychological and ethical factors are especially important. So, it is very important that officers acquire significant social and humanistic education during schooling and training, but also through lifelong training, in order to understand great social tendencies, complex social processes, delicate social situations and the consequences of their potential decisions.

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CHAPTER 3

Virtues for the Smallest Gang?

A Contribution to the Leadership Ethics of Urban Warfare

Florian Demont-Biaggi

Summary

There is a widespread consensus that urban warfare poses significant challenges for military leadership. In this paper I examine general ethical questions associated with the strongest gang model for urban warfare, proposed by David Betz and Hugo Stanford-Tuck. The paper eventually focuses on leadership responsibility. What are the particular ethical demands on small-team leaders in urban warfare? The claim I shall defend is that military leadership according to the strongest gang model requires a kind of leadership which is virtuous in a special sense. Such a requirement on character is not optional. But it is demanding.

Keywords

urban warfare – leadership ethics – military leadership – responsibility – mission command

1 Introduction

There is a widespread consensus that – due to population growth, urbanization and interconnectedness on various levels – future wars will increasingly take place in urban areas. There is also widespread agreement among military pundits that urban warfare poses significant challenges for military leadership. According to the US *Joint Urban Operations* doctrine, reasons include: cities may reduce the advantages of the technologically superior force; ground operations can become manpower-intensive, are decentralised, time-consuming, and may result in large ratios of civilian to military casualties. It is also thought that, among several other tactical challenges, offensive operations in urban areas will reduce advantages otherwise conferred by numbers and equipment. In addition to that, intelligence support requirements are considered more

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demanding, rendering logistics more challenging.[1] In many ways, urban operations tend to be expensive, because they are often time-consuming, which renders them resource-intensive and stressful for combat forces both on the physical and the psychological level.

Aggravating the military challenge is the possibility of a great toll on civilians and civilian infrastructure. This is a serious problem not simply because civilians are present in urban environments, but also because the military challenges just mentioned make it so much harder to deal with their presence in an ethically correct way when pursuing military objectives. Thus, bearing these factors in mind, there seem to be enough reasons to commend as a general rule for the military ethics of urban warfare: avoid cities! Notwithstanding this aspiration, we do have to expect that it will be increasingly difficult to avoid military action in urban environments in the future. This evidently poses a serious challenge for liberal states employing value-sensitive armed forces and for their morally conscious military leaders. All too often, the fact that urban warfare is costly on so many levels results in political consequences, which may be hard to bear for western democratic governments.

In a recent article, David Betz and Hugo Stanford-Tuck have questioned received military wisdom on urban warfare. They argue that urban warfare is not more difficult than other types of warfare and since it will probably be more prevalent in coming years, Western armies should learn to do it well. They propose a *strongest gang* model, which addresses the problems of urban warfare through a combination of a change in tactics, a different command mindset, employment of technological innovation and hard training, based on these new ideas, which takes place in realistic environments. In summary, the *strongest gang* model envisages small, fast expert units, which operate independently, decisively and through simultaneous actions using their own initiative to keep enemies on their heels, thus being able to better make use of the potential advantages which urban environments afford. In what follows I shall consider the general ethical questions this provokes, but will eventually focus on leadership responsibility. In particular, what are the ethical demands on small-team leaders in urban warfare?

Betz and Stanford-Tuck emphasize that the presence of civilians is a complicating element on every level from tactics to the operational and through strategy to policy. Drawing on Alice Hills' analysis, they see the difficulty of

1 The list has been adopted from *Joint Urban Operations* Joint Publication 3–06. Joint Chiefs of Staff, *Joint Urban Operations* 2013 I-5 to I-9.

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the problem as moral and normative in nature.[2] Nevertheless, they do claim that their *strongest gang* model does considerably ameliorate what is ethically problematic about urban warfare, since military actions become more precise and more discriminate in a way that is a particular affordance of urban environments:

> The relatively short range of engagement can lead to greater visibility of the enemy allowing precision and, therefore, a *possible* reduction in the need to use indirect fire and a concomitant reduction in collateral damage. Moreover, outflanking the enemy is easier, as is isolating enemy positions. In sporting terminology, it is easier to create the 'one-on-ones' that afford the team's best players the opportunities to use their skills to the team's advantage.[3]

Small-scale, decisive, fast action hence makes all the difference in this model and there are – according to these authors – good reasons to expect more proportionate military action of the sort favoured by consequentialist military ethics. For this to happen, 'the most important thing is the tactical aptitude and leadership qualities of the combat forces involved'.[4] So, we might get better results overall, but there is an important human factor on which that potential benefit hinges. From the point of view of military ethics, it makes sense to probe into the model a bit more, asking questions about the particular aptitude for ethical decision-making and responsible leadership this model implies: what are the *ethical qualities* military leaders and their subordinates should have to engage in military action according to the *strongest gang* model? In this chapter, I shall investigate the issue and, based on philosophical reasoning and results from other disciplines, propose answers.

The model requires control measures that are 'simple, robust, and as unrestrictive as possible',[5] granting more autonomy to leaders and soldiers on the ground. This amounts to a shift in command structure from command and control to mission command, because initiative action at the lowest levels of decision-making is seen as crucial. It requires trust from higher levels, which in turn requires that those leaders and soldiers on the ground have the right

2 David Betz and Hugo Stanford-Tuck, 'The City is Neutral: On Urban Warfare in the 21st Century' (2019) 2, 4 *Texas National Security Review* 65; Alice Hills, *Future Wars in Cities: Rethinking the Liberal Dilemma* (Frank Cass 2004).

3 Betz and Standford-Tuck (n 2) 72.

4 *Ibid.* 76.

5 *Ibid.* 82.

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sort of mindset to make the right choices. There is, hence, a notion of virtue implied in all this. In order to spell it out, I shall towards the end of the paper make a suggestion based on my own interpretation of authentic leadership theory, which is, I argue, particularly well-suited to make sense of leadership in extreme situations (and leading small teams in urban warfare certainly qualify as extreme leadership situations).[6] The claim I shall defend is that military leadership according to the *strongest gang* model requires a kind of leadership, which is virtuous in a special sense. Such a requirement on character is not optional. But it is demanding.

2 Tactical and Operational Preliminaries

In order to understand the *strongest gang* model, we first need to consider some general points about urban warfare. And it is best to understand the specificities of the urban combat environment from the ground up, beginning with some basic facts about the tactical level, then moving up to the operational level and finishing with a few remarks about the strategic and political level. This will serve as a backdrop for introducing the *strongest gang* model.

Regarding terrain, it is immediately obvious that the urban environment comes with particular affordances.[7] Buildings provide cover, soldiers can use them for protection and concealment. If buildings are multi-storied, they add a third dimension to the terrain, which strongly affects the possibilities for surveillance, weapon usage and, in many cases, movement. The third dimension also extends to underground, which is evident when we look at sewer systems, underground tunnels for transit or various ducts for ventilation, electrical installations or lifts, as these enable lateral movement for soldiers. Bridges, cranes, passageways or other urban constructions are also affordances that soldiers may use to their advantage in that environment. The heavy

6 For details on authentic leadership in extreme situations see Florain Demont-Biaggi, 'Authentische Führung in Extremsituationen' in Eva-Maria Kern, Gregor Richter, Johannes C. Müller and Fritz-Helge Voß (eds) *Einsatzorganisationen. Erfolgreiches Handeln in Hochrisikosituationen* (Springer Gabler 2020). The definition of leadership in extreme situations follows Kernic: Franz Kernic, 'Facing Death: The Dynamics of Leadership and Group Behavior in Extreme Situations When Death Strikes Without Warning' in Michael Holenweger, Michael K. Jager and Franz Kernic (eds) *Leadership in Extreme Situations* (Springer 2017).

7 The characteristics given here loosely follow Posen: Barry Posen, 'Urban Operations: Tactical Realities and Strategic Ambiguities' in Michael C. Desch (ed) *Soldiers in Cities: Military Operations on Urban Terrain* (SSI Publications 2001) 151–152.

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equipment of units trained in armoured warfare is unwieldy here and advantages it does have in other contexts cannot be fully effective in many urban contexts. Engagements usually take place at close range, where armour and flak jackets are less effective and where light antitank weapons can be fired from different angles, precisely directed at thinner layers of armoured vehicles. The third dimension below and above also holds opportunities for using explosive devices in creative, surprising ways. Open spaces and wide, unobstructed roads are scarce and normally easy to observe (and to target) from different locations. In addition to that, mechanized forces can sometimes find it difficult to manoeuvre on urban roads and, at any rate, have limited possibilities to move undetected.

Normally urban environments are seen as very favourable to the defender.[8] While it is obvious (although not always fully acknowledged) that the affordances of the urban terrain can be useful to all parties involved, reliable information about it will make all the difference. Of course, local actors do know the local environment, are accustomed to it and can often make preparations before outsiders appear on site. Posen writes that modern reconnaissance and positioning technologies might provide some leverage for outsiders – but I suppose that even with current drone (and other) technologies, it is not at all clear that it will attenuate the epistemic differences between local actors and outsiders.[9] In fact, in recent years local actors have learned to exploit the connected, networked affordances of modern cities, employing emergent technologies in ways that make it hard for outsiders to keep up. In particular, local actors have begun to use drones, social media and other emergent technologies, thus raising the stakes for outsiders considerably.[10] This does not substantially change the issues Posen identified more than 20 years ago, but aggravates some of the points about intelligence and technology he saw as potentially problematic:

> At the micro level, the fact that combat occurs at very low levels of aggregation among elusive infantry forces and in a terrifically complex physical environment, may simply present more intelligence problems than technology can solve. […] Simply looking at city streets and allies from above will not likely give the attacker the information he needs. […] [Some suggest] new technologies that might allow an attacker to seed an area with sensors of various types, or to dispatch robots into places

8 *Ibid.* 152.

9 *Ibid.*

10 Margarita Konaev, *The Future of Urban Warfare in the Age of Megacitie*s (*Focus stratégique No. 88,* Ifri 2019) 40.

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> where one would not wish to send a man. But these solutions will have their own problems. The sheer volume of space to be surveilled is quite daunting. Moderately clever adversaries will surely find ways to disable or trick such distributed sensors. A defender rich in manpower can afford to allocate large numbers of people to this task. And our opponents very likely will be rich in manpower.[11]

For what follows, I take these points about the tactical elements of urban warfare as a given. What needs closer scrutiny are some of the inferences concerning the operational and strategic levels that are derived from this. Posen, for one, writes that these tactical points provide sufficient reason for the claim that 'urban combat is the domain of old-fashioned infantry'.[12] This claim should be taken with a pinch of salt, for typical infantry units are accustomed to a different terrain, without a third dimension allowing the numerable additional possibilities for concealment, movement, surveillance and targeting that urban buildings and other constructions afford.[13] Reconnaissance in a mountainous area, a jungle or a desert all differ – but even as a group these three terrain types are set apart together if compared to reconnaissance in an urban environment and the special problem of epistemic differences between local actors and outsiders that inheres in it.[14] No wonder that, as Posen mentions, historical examples and simulated attacks suggest that infantry units have to cope with a disproportionately damaging loss of 30–45 percent. And of course, if we only have typical infantry at our disposal, we must make refraining from all-out urban warfare a general rule for political and strategic decision-making, while on the operational level we must be restrictive and avoid full-scale fighting as much as possible. In addition to that, typical infantry will need specialised training to become more effective in the urban environment – which does not only hold terrain particularities, but also civilian population and infrastructures requiring adaption in the ways military objectives are pursued. Casualty statistics for the battles of Mosul and Basra, for example, suggest that new strategies for coping with the issues have been installed and that they point

11 Posen (n 7) 153.

12 *Ibid*.

13 That said, there are of course specialised infantry units such as the UK Royal Marine Future Command Force, which are very capable of operating in small teams of 12 in different environments, including urban environment. What makes them special is precisely the capability to use urban affordances in ways that more traditional infantry units cannot.

14 A later section in this paper will make clear in what other ways effective ground forces in urban warfare do and should differ from old-fashioned infantry.

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into the right direction. And even though there are new challenges in this field, overall, the prospects seem to be not as bleak as Posen suggested 20 years ago.

Posen draws due attention to the fact that there are great differences between full-scale urban fighting, urban counterinsurgencies and urban peace enforcement.[15] The latter two are very different from the first. While full-scale fighting should always be avoided, urban COIN and peace enforcement missions require a more careful assessment. While the costs for building standing units for the latter two mission types can be considerable, the prospects for success seem reasonable if they are employed for missions that will not require high-intensity, full-scale urban combat. Such combat is, if I read him correctly, within the exclusive purview of typical infantry units – and for them, the losses to be expected are disproportionately high.

Posen's outlook (the fact not withstanding that the article I drew this from was published in 2001) still seems to prevail among military pundits. The November 2013 version of the *Joint Urban Operations* (JUO) doctrine formulates a closely related view for decision-makers on the operational level. Some of the points we mentioned about the tactical level are reiterated on the operational level, while new points appear as the scope widens with shifting levels. According to this doctrine, what is peculiar about the urban environment is its complexity, which can be understood as an interplay of three factors.[16] First, there is the complex man-made physical terrain. These are the special affordances mentioned when discussing the tactical level. Next, and this is an element directly relevant for military ethics, is the fact that even during warfare, a population of significant size and density usually dwells in and uses the urban terrain. Third, there is an infrastructure upon which those people (and possibly others nearby or even the entire nation) depend. And these three factors constitute a complex and dynamic system which impacts military operations in ways which are far from trivial. The doctrine specifies a list of common characteristics that have to inform operational considerations regarding the urban environment.[17]

First, the urban environment can reduce advantages afforded by technology. Observation and surveillance are difficult in such an environment and local knowledge is often more helpful than technological means. This has a direct impact on command-and-control processes, logistics, communications reliability and the possibility of aviation operations and airspace support. Ground operations are easily reduced to the level of small unit combat. Together, the

15 Posen (n 7) 162–165.

16 *Joint Urban Operations* (n 1) I-2.

17 *Ibid.* I-5 to I-9.

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requirements to minimize harm for civilians and to preserve infrastructure may also reduce advantages due to technology.

Clearing buildings, controlling and securing infrastructure and population requires and ties down considerable numbers of ground forces. The problem is accentuated if there is an insurgency or terrorist threat. And of course, the ability to draw on local knowledge or even the possibility to get support from local security forces will ameliorate the situation. But ground operations nevertheless easily consume much manpower.

Another (albeit closely related) aspect is decentralisation. Small units are often dispersed in different buildings, passageways etc., where they perform tasks that possibly vary considerably. This complicates command and control, combat identification, information sharing, logistics and target identification. This sort of decentralisation therefore poses a particular challenge for military leaders, as it renders the overall situation hard to manage. Often, operational and strategic plans have to be modified and this all usually leads to urban operations taking significantly longer than originally expected. Although the doctrine does not mention this explicitly, it is highly relevant to bear in mind that prolongations (especially if unforeseen) also make operations more resource-intensive than expected and raises demands on the physical and psychological resilience of the ground forces. Part of the problem is that it takes much time to understand urban patterns, i.e., to understand what events and what behaviour by locals count as normal in that specific environment in order to distinguish it from events and behaviours that require attention or even immediate action.[18] If such patterns are not understood to a sufficient degree, the risk of overreacting or underreacting to events rises considerably, making proportionate military action much more difficult.[19]

Even though cases vary, urban areas usually hold a significant number of civilians. There is hence a possibility that ratios of civilian to military casualties are high. That some of the civilian population might be hostile poses an additional problem, especially if media coverage of civilian casualties presumes that they are all neutral victims. The presence of civilians – be they friendly, neutral or hostile – and requirements to preserve infrastructure constrain operations and influence the design of rules of engagement as well as rules for the use of force, resulting in rule-sets, which are generally more restrictive than in other areas such as mountains and jungles. Not explicitly mentioned in the doctrine is the fact that this may easily result in dangerous asymmetries: while

18 *Ibid.* 1-8.

19 *Ibid.* 1-9.

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one party might have additional restrictions, a determined adversary might choose not to shun civilian casualties or damage to infrastructures in order to derive a significant advantage from this. Of course, accepting civilian casualties, employing human shields, promoting civilian hostilities etc. will always provide an unscrupulous adversary with some advantages, no matter what terrain. But the problem is accentuated in urban areas and there are tremendous differences between scenarios where civilians were (at least to a significant degree) evacuated and scenarios where the area is still densely packed with civilians, especially if they can be friendly, neutral or hostile.

While discussing the tactical level, the impact of urban terrain and infrastructure on weapons employment and munitions effectiveness has been mentioned. Targets can be masked by structures and direct, close-range fire is more likely. Weapons and munitions thus have to be chosen carefully and in accord with the operational limitations (there are now emerging AI controlled weapon systems specifically designed for urban environments). But it is also very significant whether civilian population and infrastructure (including media outlets) are available to help with the pursuit of objectives during the operation. Apart from local knowledge, commercial media and information spread on Internet channels by individuals or non-commercial groups (including NGOs and IGOs) can significantly influence the outcome of an operation and may also constrain armament options. Usually, this is a considerable advantage for urban defenders with local knowledge and connections, which can effectively reduce the advantages attacking forces may have in numbers and equipment. But in some scenarios, there might be options of employing surveillance technologies, cyberattacks, negotiations with locals or hacking to change the odds in favour of an attacker – especially, when communication channels or even data (e.g., for GPS positioning or coming from digital sensors) can be manipulated. All these factors also determine how difficult (or easy) it will be to isolate and engage defending forces.

Such tactical and operational considerations buttress the view that the urban environment is usually very favourable to defending forces. They also clarify the complexities involved in urban operations. Yet, on the strategic and political levels, cities remain important. They are often at geographically central or otherwise distinct places, may contain resources and infrastructures that are crucial for objectives on these higher levels, or they are simply prestigious and winning (or loosing) them strongly affects morale as well as reputation. The Taliban in Afghanistan recently made an effort for all these reasons to capture provincial cities and this arguably allowed them to develop an advantageous position for themselves.

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But given the possible costs of urban warfare, the risks and uncertainties associated with such campaigns (and maybe also the costs of the special training requirements for ground forces to do it well), the disadvantages often outweigh what one can rationally expect to gain. It is against this backdrop that the article 'The City is Neutral: On Urban Warfare in the 21st Century' by David Betz and Hugo Stanford-Tuck should be read.

3 Neutral Cities? A Criticism of Betz and Stanford-Tuck's *Smallest Gang* Model of Urban Warfare

The central point of the paper by Betz and Stanford-Tuck is that we should keep in mind the possible affordances of urban warfare and not exclusively focus on all the difficulties it comes with. In particular, they claim that urban warfare is not intrinsically more difficult than other types of warfare and that, in and by itself, it is neutral just like every other environment.[20] What we need to find out is how we can use all the particularities of the urban environment to our advantage and, based on that, to fundamentally revise our attitude towards urban fighting and to revise the guardrails of our operational and tactical thinking accordingly. For them, the challenges of urban fighting should be solved through specialised training, changes in command structure – moving to a decentralised model focused on mission command – and, finally, technological innovation.[21]

Before we go into details, a few remarks are in order to make clear what role the article plays for my overall argumentation. First of all, the short presentation of the operational and tactical particularities of urban warfare presented above put an emphasis on the role of epistemic asymmetries and I have also drawn attention to ethical issues. Betz and Stanford-Tuck do not mention the asymmetries and it might be because of this omission that they find themselves in a position to claim that the urban environment is neutral. Of course, the environment itself is neutral, but everybody in it has a certain perspective on it and the epistemic differences between those perspectives make all the difference. It might be an open question whether an exclusive focus on the environment will help military leaders overcome these epistemic differences. But I cannot see how that might be possible and there is certainly nothing in Betz and Stanford-Tuck's article that would amount to a decisive answer.

20 Betz and Standford-Tuck (n 2) 61.

21 *Ibid.*

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There are also ethical asymmetries in urban warfare. Rules of engagement, rules of use of force and the way they spell out ethical conventions in order to constrain military leadership and action provide adversaries not bound by these rules and values with possibilities to utilize civilian presence, infrastructures and other urban structures to their advantage: they may employ human shields, IEDs etc. in ways that are not admissible by conventional ethical standards. It is also likely that such adversaries feel less bound by ethical proportionality considerations requiring restraint lest they cause too many (civilian) casualties or damage to infrastructures. The role of ethical asymmetries (under which, for present purposes, I also subsume legal asymmetries due to a unilateral adherence to the spirit of the Law of Armed Conflict) is not something Betz and Stanford-Tuck address.

Even though Betz and Stanford-Tuck admit that much of what they say is not new, their study would have profited from engaging more thoroughly with earlier studies and historical models of what they propose. In particular, it would be useful to compare their approach to Stephen Biddle's study[22] who also argued for changes in training, command structure and technological innovation, but – pace Betz and Stanford-Tuck – did not present his list in order of priority. When it comes to historical models, Betz and Stanford-Tuck seem to have missed that much of what they propose – especially regarding command structure and employment principles – bears a striking similarity to how Germany sometimes approached the operational and tactical requirements of urban warfare during WWII. We should pay attention to the fact that mission command did prove to have its own shortcomings in real battle and Betz and Stanford-Tuck have not done enough to make clear that their model will not fall prey to the same problems once we move from abstract military thought to concrete military action.[23] Of course, mission command as presented in the British Army Doctrine probably had more influence than the German doctrine(s), especially on the serving infantry officer Stanford-Tuck. But the comparison with the German notion will clarify what aspects of mission command in the *smallest gang* model are likely to be problematic.

For Betz and Stanford-Tuck, current approaches to urban warfare are too restrained. Not only do they find these approaches too positively controlled and manpower-intensive, the primary problem they find has to do with

22 Stephen Biddle, *Military Power. Explaining Victory and Defeat in Modern Battle* (PUP 2004).

23 An insightful study of German mission command and its history up to the end of WWII, which discusses in detail the operational and tactical considerations relevant here, is Marco Sigg's study: Marco Sigg, *Der Unterführer als Feldherr im Taschenformat. Theorie und Praxis der Auftragstaktik im deutschen Heer 1869 bis 1945* (Schöningh 2014).

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attitude. They criticise too much caution and argue that too much initiative is ceded to 'objectively weaker and less capable opponents'.[24] For them, the urban environment's demands are as severe as those of the jungle, but in turn rewards tactical skill based on adequate training, equipment, support and mental preparation.[25] However, based on what was said before, we must insist that the jungle is very different because it lacks civilians and civilian infrastructures, both ingredients which fundamentally influence the operational and tactical requirements, because they are integral parts of the typical urban environment. On the other hand, tactical skill alone is not helpful, especially if the adversary – even if he is objectively weaker and less capable – has local knowledge or significant advantages because of less strict ethical, legal or other engagement constraints. Such asymmetries may require control and caution lest reckless action leads to unwanted damage or failure.

With the likely reduction to small unit combat and the possibility of decentralisation, military leaders on higher levels can lose control of the battle. If, at the same time, political and strategic interest in the city prevail, the tactical and political become 'inextricably entangled'.[26] Betz and Stanford-Tuck also write that 'imposing political will on people requires that it be exercised where people actually live'.[27] This alone considerably increases the pressure on small combat units and their leaders. But if this is combined with a change in command structure, empowering subordinate military leaders through mission command in order to grant them more initiative, flexibility and control, the responsibility might be too much for leaders on this ground level. Suddenly, leaders of small combat units not only need adequate tactical and combat skills, they also need the overview and decision-making capacities to bear the sort of responsibilities that are usually shouldered by officers on much higher levels of the military hierarchy, who have been specifically selected and trained to bear that weight. If things go wrong and the small combat unit fails to achieve its objectives or fails ethically, accountability probably also stays on that level. With this, strategic or even political failure can be attributed to military leaders on the lowest level, while superiors can absolve themselves from all responsibility. In other words, small unit leaders may become scapegoats for mistakes, which are not theirs and are thus exposed to considerable additional risk. Since Betz and Stanford-Tuck do not discuss the issue of responsibility,

24 Betz and Standford-Tuck (n 2) 64.
25 *Ibid.* 61–62.
26 *Ibid.* 63.
27 *Ibid.* 64.

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I presume that they are not aware that this sort of systemic injustice is a serious problem for their proposal.

Concerning command structure, Betz and Stanford-Tuck are convinced that fighting in the urban environment is easier for military leaders at the small-team level than for leaders higher up.[28] This is because it is seen as so crucial to take advantage of multiple approach routes, various possible sources of fire support and opportunities for surprise whenever such occasions manifest. They do not claim this explicitly, but it seems as if consultation with commanders concerning tactical decisions requiring quick action are considered an unnecessary detour. The primary reason for their view is that tactical and operational victories are made up of small-team successes.[29] And since leaders on that small-team level are able to make rapid decisions based on better information, they argue, allowing more freedom on the ground will ensure small-team successes, which then add up and together raise the odds for overall victories. But of course, this line of argument is bogus, because it fails to accommodate epistemic asymmetries. Coordination of small teams may sometimes be crucial in order to make their successes add up and contribute to overall victories. Such coordination is, however, not something that can easily be orchestrated by small-team leaders at the front line, precisely because urban fighting is often marked by decentralisation (especially if the teams do have different objectives to accomplish). Furthermore, it is always possible that the operational level has relevant information not immediately available on the ground. That additional information can come from hacking, surveillance technology or independent contact with civilians who provide local knowledge. And if a small-team leader faces ethical challenges, in particular those due to ethical asymmetries such as human shields etc., consultation with superior levels and an at least partially shared decision-making process can be very helpful. Again, since asymmetries are likely to play a role in urban warfare, consultation with superiors should not be seem as burdensome, but as an actual advantage, because it promotes military success as well as ethical responsibility. It also alleviates psychological pressure and might not only make a difference for immediate psychological stamina, but also for psychological health in the long term.[30]

28 *Ibid.* 70.

29 *Ibid.*

30 The sort of quasi-independent operations sketched here are usually the preserve of Special Forces, who are limited in number and held in reserve for situations where they can achieve strategic effect. Training them requires considerable resources and usually there are not too many teams available. If the overall operation is city wide, one or two teams will not suffice – and coordinating them properly will be a great priority, which

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These critical remarks easily draw too much attention and might suggest a line of argument that I in fact do not want to pursue. I am not arguing for an outright rejection of what Betz and Stanford-Tuck propose. What I want to argue for is that matters are more complicated than they present them and that the details they fail to consider are highly relevant from the perspective of military ethics (but not only from that perspective). They are certainly right to insist that, in the urban context, a high-tempo manoeuvre operation often has advantages over a methodical firepower-driven operation, because – if it is done well – defenders cannot fortify, prepare IEDs, install surveillance etc. If attackers maintain a high pace, not allowing their adversaries to prepare, reorganise, gain an overview or simply rest, relatively little firepower wielded with precision and good timing can be enough to achieve objectives. This can indeed also be tremendously profitable to post-war building efforts and in maintaining political will and public consent.[31] Nevertheless, I suspect that Betz and Stanford-Tuck underestimate the general role of civilians and hence fail to appropriately contextualise the possible advantages of small units operating at a fast pace. They do write as if there was no difference for tactical or operational purposes between densely populated environments and 'relatively uncluttered' ones.[32] It is much easier to operate at a high pace and with precision if there are significantly less civilians than if an area is densely populated. In fact, in relatively uncluttered areas, tactical leaders may be allowed more leeway and even some additional decision-making possibilities for straightforward operational reasons. But if an area is densely packed with civilians, small-team leaders tend to find it more challenging to keep an adequate overview, as decentralisation may be accentuated. Superior commanders may also have additional possibilities to track civilians and their movements. In some cases, they might even have the means to move or even evacuate them through other units or perhaps through the help of local security personnel. High-tempo manoeuvre operations are no panacea and there are contexts where they are not the right method to conduct military operations in urban areas. The choice of methods should remain with leaders in charge of the operational level and it should remain an informed choice based on criteria specific to the operational level of urban fighting.

There are, thus, some points on which Betz and Stanford-Tuck are right. Apart from military considerations, there are ethical worries that can only be

might possess its own challenges. I am indebted to an anonymous reviewer for bringing these additional points to my attention.

31 Betz and Standford-Tuck (n 2) 70–71.

32 *Ibid.* 71–72.

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addressed through a fresh and unbiased look at the tactical and operational affordances of the urban terrain. But, as I have argued, it is doubtful whether the *smallest gang* model gives us all we should want. The most important worry I have is that small-team leaders on the tactical level are not in the best position to bear all the responsibilities they would have to bear if we adopted the model. But if we want to understand clearly the issue of leadership responsibility that manifests here, we should first consider some lessons from history and next employ a sensible framework for leadership in extreme situations. With these two additional pieces of information, we will be in a better position to say something of value about the ethical demands on military leadership in urban warfare.

4 Historical Lessons from German Mission Command

Between 1869 and 1945, the German army developed its theory and practice of mission command. They also had several opportunities to employ this command structure in battle and there are hence interesting cases to study the elements of small-team leadership in the context of mission command. The development of the doctrinal foundations of mission command has, according to Marco Sigg[33] their roots in how major military thinkers such as Clausewitz and Moltke the Elder construed the nature of war. For them, war is marked by complexity and uncertainty and it is rather likely that during the course of military action, a strict command and control approach as well as strict requirements concerning coordination and uniformity cannot be upheld. From this, military thinkers inferred that NCOs leading small teams at the lowest levels must be able to show initiative and make good use of opportunities as they manifest themselves. Since its doctrinal inception, it has also been clear that mission command carries the risk that interpretations of rules and commander's intent may vary and that autonomy thus sometimes degenerates, eventually turning into arbitrariness.

Mission command must, however, not be confused with autonomy. Sigg[34] identified seven distinct criteria for mission command in his doctrinal analysis:

1. Decisiveness (*Entschlossenheit*): this includes courage, the will to make decisions and the capability to take responsibility, which is connected to valuing character and personality in military leaders;

33 Sigg (n 23) 174.

34 *Ibid.* 175.

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2. A bellicose mindset (*Offensivdenken*): this refers to the will to determine the situational constraints on which adversaries can act and includes the will to set the pace of the engagement;
3. Autonomy (*Selbstständigkeit*): this does not refer to an unbridled autonomy, but one within specific limits;
4. Obedience (*Gehorsam*): this mainly refers to discipline regarding commander's intent and situational requirements;
5. Uniformity (*Einheitlichkeit*): this refers to coordinating squads through strict leadership at the front-line (*Führen von vorne*), with an emphasis on extensive communication;
6. Judgment (*Urteilsvermögen*): this refers to a creativity to respond to the requirements of specific situations, abandoning schemas where necessary and putting content before form;
7. Adherence to the leadership process consisting of situation assessment (*Lagebeurteilung*), decision-making (*Entschlussfassung*) and word of command (*Befehlsgebung*).

Traditionally, mission command requires that these seven criteria are fulfilled. But, depending on circumstances, they may be weighted differently. In application, weighting the different aspects of mission command was not always easy, especially because the borderline between autonomy and arbitrariness was sometimes rather delicate.

Sigg draws attention to the fact that success itself was neither a criterion nor an element of mission command, but was considered an external factor.[35] The doctrine thus made room for the possibility that mission command leads to failure. In contrast, it was also clear that in cases where arbitrariness led to success, the action in question cannot automatically be seen as substantiating mission command. Still, initiative and even bellicosity were always highly valued: not acting was seen as much worse than acting wrongly.

So much for the doctrinal footing of mission command. Note that the rationale for developing this approach as well as some of its central prescriptions seem related to what Betz and Stanford-Tuck have in mind with their smallest gang model. What is obvious, however, is that the German doctrine is much more elaborate in its description of command structure. But, then, how did this play out in real engagements?

One effect of applying mission command in real battle was that leaders of ground forces wilfully undermined (and sometimes even contravened) the intent of leaders on the operational level.[36] Some battles were won not due to

35 *Ibid.*
36 *Ibid.* 251.

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but despite that sort of arbitrariness of leaders of ground forces. The reasons for arbitrariness included ambition, rivalries, a belief that one understands the situation better than the superiors who were sometimes simply rejected as not adequately qualified. All of this was fuelled by a boisterous, exaggerated and bellicose spiritedness present in all operations and, of course, fully in line with the values behind doctrinal prescriptions. And this is how military autonomy in the spirit of mission command gave rise to incidents of arbitrariness and insubordination.

According to Sigg the essence of the problem for military leaders was to find a good balance between autonomy (*Selbstständigkeit*) on the one hand and coordination as well as uniformity (*Einheitlichkeit*) on the other hand.[37] Too often German troops acted against the prescribed coordination and uniformity (*Einheitlichkeit*) during the German unification wars, WWI and WWII. Thus, while mission command as an ideal was seen as mandatory, its application on the ground remained highly controversial among German military thinkers at the time.

Sigg also analysed the application of mission command in three divisions during their participation in the War in the East (1942/43), paying special attention to how the three division commanders were weighing and balancing out the different elements of what the doctrine envisaged as mission command. In order to ensure coordination and uniformity (*Einheitlichkeit*) in the spirit of official doctrine, all three divisions tended to attenuate autonomy, while offensive action and decisiveness remained important.[38] The presence of some of the highest division leaders at the front-line was noteworthy, since it allowed them to communicate with (and at times to micromanage) the leaders on the tactical level. But even though group leaders on the tactical level were sometimes led directly by superior officers of the division, they were also often involved in decision-making processes. Thus, intensive interactions between the different leadership levels characterised military action in these cases and made it possible to put the accent on coordination and uniform action despite an explicit commitment to mission command. The decisions were not usually taken on the tactical level and action required consultation with superiors, even in critical situations. Even though mission command was employed to allow quick, decisive action when circumstances were favourable, there still was a duty to report action conducted without explicit orders, to have it assessed and approved (or sanctioned) by commanders.[39]

37 *Ibid.* 252.
38 *Ibid.* 459–460.
39 *Ibid.* 462.

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This behaviour makes much sense if we recall the general spirit which informed the doctrinal development of mission command. Mission command was often understood as a guideline to ensure a capacity for military action in exceptional circumstances, where senior leaders could not be consulted for decision-making.[40] And the conception of the nature of war inherited from Clausewitz and Moltke the Elder accorded a high probability to the possibility that friction during an operation will eventually render a uniform and strict leadership approach impossible to uphold.

Apart from noting that the basic concerns informing the development of mission command are also concerns that are of central importance for urban warfare, I want to draw attention to two points with which Sigg concludes his study:

– From a historical perspective, the great advantage of mission command in successful applications did not lie in the autonomous actions of subordinate leaders on the tactical level, but instead in involving them in planning and decision-making processes at senior levels.
– The price of decentralisation followed by an unconstrained (or just weakly constrained) autonomy of subordinate leaders on the tactical level often was arbitrariness; bravado, offensive action and quick improvisations often led to immense losses of manpower.[41]

Bearing these insights in mind, some of the suggestions by Betz and Stanford-Tuck appear too impatient, too fast and too risky. Consider, for example, the following passage (Betz and Stanford-Tuck 2019, 79–80):

> Whatever the environment, soldiers must be taught to outthink the adversary, to get inside the enemy's decision-action cycle using violence and tempo and then stay there, because keeping the enemy on its heels, reeling backward and struggling just to survive, is universally recognized as key to a successful operation.[42]

This sort of statement is not universally valid, as our short excursus into military history has shown. Unless other elements of traditional mission command and its natural limits on the tactical level in urban fighting are taken into consideration, this advice may lead to bravado. Too much bravado can lead to unproportionate military action and, thereby, to unnecessary losses of lives. In connection with that, it is not clear how the smallest gang model can

40 *Ibid.* 461.
41 *Ibid.* 462.
42 Betz and Standford-Tuck (n 2) 79–80.

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prevent arbitrariness on the tactical level. Of course, Betz and Stanford-Tuck may reply that adequate training will take care of this. But the German troops discussed in the analysis did also have extensive training. They were drilled to adhere to specific military values, and in particular, uniformity was inculcated during training and during engagement. So, why should the smallest gang fare differently?

Pace Betz and Stanford-Tuck, the quality of training for urban warfare must therefore involve more than instilling a specific skillset, realistic training facilities and helping soldiers to a positive mindset, telling them that 'they can adapt to and thrive in this environment as well as in any other'.[43] But what else is needed to ensure fitness for urban warfare?

First of all, and based on what we have discussed so far, I would suggest that we must pay due heed to the complexity of urban warfare. I have argued that some of Betz and Stanford-Tuck's suggestions are too rash, that they are reducing complexity too much. Another insight to be gained from the general discussion of the tactical and operational aspects of urban warfare as well as from Sigg's historical analysis is that small-team leaders should consult with their superiors, even in critical situations. This does not only prevent arbitrariness, but it is also a remedy for epistemic asymmetries. Apart from that, the overall success of an operation is obviously more likely if different teams can be orchestrated to contribute to a coordinated endeavour – and that is not something tactical leaders on the ground can do all by themselves. Coordinating more than 2 teams can hardly be done on the tactical level. So, how is the smallest gang model to be applied in large cities, where ICT infrastructure, media presence (as well as NGOs etc.) matter and must be surveilled together with decentralised actions by small teams? Requirements for coordination and risks as well as opportunities for success on operational, strategic and political levels considerably constrain the applicability of the smallest gang model, which focuses so much on the tactical level.

And even if we can work around all that, small-team leaders will and should have more responsibilities if they are to successfully lead small-teams in urban operations. In particular, they will and should bear the ethical responsibility for what they and their team members do – especially in circumstances in which consultation with the operational level is impossible or where they are closely involved in the decision-making processes of the superior level. This requires virtuousness and in the next section I shall suggest how that may be approached.

43 *Ibid.* 80–81.

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5 Authenticity and Virtuous Military Leadership

Authentic leadership theory puts an emphasis on crucibles and on remaining true to oneself and one's values when the going gets tough. According to that understanding, we have to get into difficult situations, learn from mistakes and use them to grow as leaders.[44] When it comes to military leadership, we do not only encounter high risk and uncertainty, but we also encounter death through lethal force, our own and others. Military leadership, especially in combat units, means having to deal with death and it also means bearing the weight of other people's deaths.[45] Sometimes, situations can be too challenging to enable growth. It should be clear by now that military leadership in urban warfare (and elsewhere) is extreme, even if combat proceeds as in training situations. With such existential pressures, leadership responsibilities can give rise to deep feelings of powerlessness.

Based on a suggestion by Bruce Avolio and Fred Walumbwa[46] Albert Bandura's social learning theory[47] has recently been used to extend the authentic leadership framework for the purposes of military leadership and other forms of extreme leadership.[48] In that account the concept of self-efficacy plays a central role. Betz and Stanford-Tuck have made clear that a positive mindset regarding urban fighting is important and what I propose here is an elaboration of that idea. A suitable mindset for small-team leadership in the urban environment is directly related to the concept of self-efficacy. Soldiers and their leaders, like everybody else, do exercise intentional influence over their actions and they do that at different stages of their actions.[49] At a first stage they are making plans and anticipate the operation. Then, while carrying out their intentions and plans, actions must be regulated and implemented – sometimes, adaptions are necessary.[50] At a third stage, which does not necessarily only set in once all is over, self-reflection allows soldiers to observe and analyse their own actions. Are thought and action coherent? Am I in accord

44 For present purposes, I take Bill George's practice-based account of authentic leadership as a starting point. Bill George, *Authentic Leadership. Rediscovering the Secrets to Creating Lasting Value* (Jossey-Bass 2003).

45 Kernic (n 6).

46 Bruce Avolio and Fred Walumbwa, 'Authentic Leadership Theory, Research and Practice' in David Day (ed) *The Oxford Handbook of Leadership and Organizations* (OUP 2014) 344.

47 Albert Bandura, *Moral Disengagement. How People do Harm and Live with Themselves* (Worth 2016).

48 Demont-Biaggi (n 6).

49 Bandura (n 47) 4.

50 *Ibid.* 5.

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with who I want to be? It is usually at this stage where ethical issues come in, where ethical conflicts are dealt with and where we sometimes try to absolve and distance ourselves from our own irresponsibility, shortcomings, failures and harmful attitudes. But this is also the stage where we may savour success over difficulties, uprightness despite pressure to behave shamefully and honourable conduct in accord with the values we stand for. At every stage we need a considerable amount of self-efficacy in order to do what is right. If we feel powerless, the existential pressures military leadership tends to encounter may deplete us of all energy to pursue our objectives and to uphold ethical values:[51]

> People's beliefs in their coping efficacy also play a pivotal role in the quality of their emotional life and their vulnerability to stress and depression. […] [S]elf-efficacy beliefs shape people's lives […] through their choice of activities and environments at important decision points.[52]

This already amounts to a first ingredient for military virtuousness. Soldiers and their leaders need to believe in their coping efficacy and such beliefs have to be true and as reliable as possible. For while planning operations, during engagement and upon reflection, these beliefs will determine how far they can go. And if such beliefs are mistaken, soldiers and their leaders easily find themselves in situations which they cannot handle. The first criterion hence amounts to a specific sort of self-awareness, which enables realistic judgments about one's own limits. Given that urban warfare in small teams operating according to the principles of mission command may fall prey to reckless behaviour and unrealistic rashness, this sort of self-awareness can probably not be overestimated in its importance for military professionalism.

Soldiers who are able to regulate themselves and decision-makers who are able to do what is right for the collective or the mission, even if goes against their personal preferences or situational pressures, exercise self-awareness in a way that allows them to uphold ethical values. The ability and willingness to stick to ethical values is a necessary prerequisite for honourable conduct. But if soldiers have no grounds for a sensible belief in their self-efficacy, we cannot possibly demand honourable conduct from them. And if we cannot demand honourable conduct from them, it is arguably a bad idea to give them much autonomy in how they pursue objectives in urban warfare (or elsewhere).

51 See also: Albert Bandura, *Self-Efficency. The exercise of control* (Freeman 1997).

52 Bandura (n 47) 6.

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Also bound up with a realistic self-awareness is a balanced way of handling information. If we know our limits and situate ourselves and our possibilities realistically in a combat environment, we will be better decision-makers and if we are involved in the decision-making processes of superior levels, we will also be of better service. Focussing on small team leadership, communication within and between teams will also require adequate self-awareness and skilful self-regulation. Even in critical situations leaders must be able to communicate intentionally and effectively, because leading people is a form of social interaction and as such it is bound up with verbal and non-verbal communication.[53]

The sort of self-awareness introduced here and its manifestations at various levels of military leadership is a form of authenticity, because it involves being true to oneself in a very specific way.[54] It may be possible that we find ways of designing our selection processes and training routines in ways to make it more likely that we come to more authentic leaders (and soldiers) for urban warfare operations. But the important point of the notion is that authenticity is developed through mastering difficulties. Thus, if we want small-team leaders who exhibit this form of virtuousness, we need to guide them through difficulties.[55] And we need to show them how to cope with difficulties. If we grant them too much autonomy too early or if we allow reckless behaviour – even when it leads to small successes – we set the wrong incentives. True, they may feel more self-efficacy. But will they be ready when situations demand innovative and effective decision-making despite crushing responsibilities (maybe for civilians' lives, comrades' lives or the entire operation) that they cannot share

53 See Gary Yukl, *Leadership in Organizations* (8th ed, Pearson 2013). For further reflections on how important this self-regulating social navigation is for military leadership, especially when uncertain circumstances require innovation and adaption, compare Ophir Weinshall Shachar, Henrietta Cons Ponte and Ben-Ari Eyal, 'Social Navigation and the Emergence of Leadership: Tactical Command in the IDF Ground Forces in the Second Lebanon War' in Michael Holenweger, Michael K. Jager and Franz Kernic (eds) *Leadership in Extreme Situations* (Springer 2017) and Christopher Kayes, Nate Allen and Nate Self, 'How Leaders Learn from Experience in Extreme Situations: The Case of the U.S. Military in Takur Ghar, Afghanistan' in Michael Holenweger, Michael K. Jager and Franz Kernic (eds) *Leadership in Extreme Situations* (Springer 2017).

54 Note that authenticity in this context is not synonymous with transparency. Of course, what the authentic leader says and does is in complete accord with what he or she stands for – but not everything he or she stands for, feels or just thinks necessarily manifests in something said or done.

55 Of course, progressive training exists and there are serious crucibles most professional soldiers have to deal with before they are considered fit for action. But do these trainings also develop virtuousness in the sense presented here? Do these crucibles involve ethical challenges? Maybe they do – we would have to check case by case. The main point here is, however, that these elements are missing from the smallest gang model.

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with anybody? Will they be ready when they need to hold back, even though their emotions are racing or when their subordinates' emotions are going wild? All of these questions are questions of responsibility. As such they are ethical questions, because they are all about what is right and what is wrong.

In this paper, I have argued in detail why the urban context is indeed difficult for military operations. I have also argued that, despite being a good idea, the demand for small teams operating according to mission command must be carefully spelled out in order not to leave out necessary details. The most important detail that Betz and Stanford-Tuck failed to consider is the question of responsibility and the intricacies concomitant with it. Of course, responsible military leadership in urban warfare demands virtuousness and we can have more or less specific ideas about what that amounts to. But developing military leaders on the tactical level who are able to shoulder this burden is no easy task.

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CHAPTER 4

The Kosovo Conflict as a Milestone in International Intervention Practice

Hans-Peter Kriemann

Summary

NATO's intervention in the Kosovo conflict and the events leading to the air strikes of the alliance in spring 1999 were the result of complex dynamics of political and military processes. My paper will use Germany's role in the resolution of the Kosovo conflict as an example to shed light on some aspects that are very important for understanding the practice of international intervention. The first aspect explains how one gets drawn into such conflicts while the second aspect refers to the question of how the Kosovo conflict was negotiated between the various international actors. This approach may provide explanations with regard to the development and adoption of a 'Responsibility to Protect'.

Keywords

Kosovo conflict – responsibility to protect – Germany's role in the Kosovo conflict – NATO – WEU

1 Introduction

On 10 January 1999, a Serbian policeman was shot in the Račak area in Kosovo. Thereupon, Serbian security forces cordoned off the village on 15 January 1999. Heavy fighting ensued with several people being killed and quite a few arrested by Serbian security forces. When the observers of KVM – the OSCE Kosovo Verification Mission – visited the location in the late afternoon, they found one dead and several injured persons, and were told of other deaths and arrests. The following day, the OSCE members discovered 11 bodies in houses and 23 partially mutilated bodies in a gully above the village. William Walker, the US diplomat and head of KVM, came to Račak in person, accompanied by journalists from the international press. On site, he made an emotional statement

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on the events and classified them as massacre. In the process, he triggered a huge media response.[1] The so-called Račak massacre was open to debate as a political topic with images of horridly mutilated people, and it had a polarising effect on the public response and the political assessment. Though at that time, it was still unclear what had actually happened at Račak. While there had been much more severe incidents with more deaths in the previous months of the Kosovo conflict, Račak stood and stands to this day for the blame of the Serbian government for the crimes against humanity committed against the Kosovo Albanians. On this 16 January 1999, the attempt to stop the Kosovo conflict with KVM had *de facto* failed. Similar to the Dayton Process, from early February 1999 the negotiations at Rambouillet in response to Račak to were to result in the signing of a peace treaty which would afterwards be implemented with 50,000 peace-keepers, as it had been done with SFOR in Bosnia.[2] The negotiations failed, however, and on 24 March 1999, NATO began an air war against the Federal Republic of Yugoslavia (FRY) which lasted for 78 days.

After intensive investigative work and forensic investigations, the following points were considered proven facts as of 2000: the dead found in the gully above the village of Račak had been executed. A fight, as head been repeatedly claimed by the Serbian side, did not take place.[3] Among the 45 deaths, there were two women, a thirteen-year-old boy, old and frail people.[4] It could not be excluded, however, that the dead although they probably had not been KLA (UÇK) fighters themselves might have supported it.[5] The mutilations of the bodies were most likely the result of animal feeding.[6] This statement carried some weight since the condition of the dead had significantly contributed to the media impact of the images of January 1999. One question, however, was never be fully resolved: Were the people of Račak killed by Serbs or did the KLA stage a massacre to force NATO to interfere in the Kosovo conflict with military means?

The significance of Račak lies primarily in the fact that the events played an important role in the mobilisation of the public in the NATO states on the eve

1 Günter Joetze, *Der letzte Krieg in Europa? Das Kosovo und die deutsche Politik*, (DVA 2001) 46f.

2 Cf. Daalder, Ivo H., and Michael E. O'Hanlon, W*inning Ugly. NATO's War to Save Kosovo*, (Brookings Institution Press 2000) 54, note 118.

3 Renate Flottau, Claus Christian Malzahn and Roland Schleicher, 'Täuschen und vertuschen' (*Der Spiegel* 19 March 2001), http://www.spiegel.de/spiegel/print/d-18759112.html.

4 *The Prosecutor of the Tribunal against Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, Vlajko Stojiljkovic,* (*Amended Indictment*) (Case no. IT-99-37-I, ICTY), http://www.icty.org/x/cases/slobodan_milosevic/ind/en/mil-ai010629e.htm.

5 Flottau et al. (n 3).

6 Joetze (n 1) 49.

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of the negotiations at Rambouillet and were crucial for the legitimisation of the air strikes. The belatedly published investigation results proved to be problematic. Although the extent of the displacements of the Kosovo Albanian population, of killings and other crimes had meanwhile become known, in view of the partially unresolved events in Račak, time and again the question was raised whether the public had been manipulated.[7] In reality, the intervention of NATO was the result of complex dynamics of political and military processes. The events leading to the NATO air strikes of the spring of 1999 were rooted much more deeply and had begun much earlier.

For this reason, my paper will use Germany's role in the resolution of the Kosovo conflict as an example to shed light on some aspects that are very important for understanding the practice of international intervention. At first, I will analyse how interactions of domestic issues, logic of military action and foreign policy thinking can develop a dynamic that may lead to the use of military force. The point will be how one gets involved in such conflicts. In the process, the guiding actors of German conduct will be made clear; and the question will be raised why the German Federal Government was eventually confronted with the issue of a German participation in a combat mission. My methodical approach will be to forge a link between the foreign and security conduct of actors and the military planning process. As a result, this article is part of the common ground of the fields of recent military history and modern political history. Afterwards I will look at how the Kosovo conflict was negotiated between the various international actors. Based on the interests of the individual actors, I will explain to what extent national interests influence issues of legitimacy. In practice, they are inextricably linked to the question of whether and when a military intervention takes place.

These aspects can thereby provide explanations why the lessons learned from international practice of intervention after 1990 have, on the one hand, led to the development and adoption of norms like 'Responsibility to Protect' while, on the other hand, their normative claim and the realities of interventional practice continue to diverge.[8]

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7 A much noticed and highly controversial report of the German TV station WDR argued that it was the NATO air war which caused the humanitarian disaster: 'Deutschlands Weg in den Kosovo-Krieg – Es begann mit einer Lüge' In: https://www.youtube.com/watch?v=ZtkQYRlXMNU; An article in the *Die Welt* newspaper accuses the authors of the report of manipulating the public by confusing cause and effect and failing to research the history of events. 'Einseitig' (*Die Welt* 14 February 2001).

8 The following remarks are based on my research on the political conduct of actors and the military participation of Germany in the Kosovo conflict. Further supporting documents and summarised findings are provided in: Hans-Peter Kriemann, *Hineingerutscht? Deutschland*

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2 The Beginning of the Kosovo Conflict

The immediate history preceding the Kosovo War began as early as in 1989 when the status of autonomy, which had been achieved under Tito in the 1960s, was revoked – an act of deep humiliation for the Kosovo Albanians. When in the summer of 1991 the disintegration of the Yugoslav state escalated in such a manner that it turned into open violence, Kosovo initially played a minor role in international attempts at conflict resolution. The Cold War had just come to an end, and a process of international reorientation and repositioning had begun. The initial focus of European Community was on not endangering the young European peace order and preserving the whole of Yugoslavia. Similar to the developments in the constituent republics of Yugoslavia, a disengagement process from the Socialist Federal Republic of Yugoslavia (SFRY) had also begun in Kosovo. Unlike the constituent republics, Kosovo as a Serbian province was part of a sovereign state under international law and especially of Serbian identity. Subsequently, the Yugoslav constituent republics were given the prospect of international recognition of their national sovereignty under clearly defined conditions at the beginning of 1992.[9] This, however, did not apply to Kosovo. Despite unresolved problems and massive tensions in the Serbian province, international attention was focussed on the resolution of the civil wars in Croatia and Bosnia Herzegovina.

Initially, the democratic camp was dominant in Kosovo. The Democratic League of Kosovo (LDK) emerged victorious from the internationally unrecognised parliamentary elections of 24 May 1992; its leader Ibrahim Rugova was elected state president. He pursued a non-violent course towards

und der Kosovo-Krieg (Bundeswehr im Einsatz, vol. 2, Vandenhoek & Ruprecht 2021); Hans-Peter Kriemann, *Der Kosovokrieg 1999* (Kriege der Moderne, Philipp Reclam jun. Verlag GmbH 2019).

9 On 9 November 1991, the Badinter Arbitration Committee, which had been set up by the Council of Ministers of the European Community on 27 August 1991 to clarify matters of international law, came to the conclusion that the Socialist Federal Republic of Yugoslavia was in the process of dissolution and argued in favour of creating the prerequisites for the recognition of the constituent Yugoslav republics that wish for their independence. The requests of the republics were subject to examination by the Badinter Arbitration Committee to implement the resolution, i.e., their recognition on 15 January 1992. Cf. 'Erklärung der EG-Außenminister zu Jugoslawien am 16. Dezember 1991 in Brüssel'. In: A*ußenpolitik der Bundesrepublik Deutschland. Dokumente von 1949 bis 1994. Hrsg. aus Anlaß des 125. Jubiläums des Auswärtigen Amts*, Cologne 1995, Dok.-Nr. 274.1.; Cf. Holm Sundhaussen, *Jugoslawien und seine Nachfolgestaaten 1943–2011. Eine ungewöhnliche Geschichte des Gewöhnlichen,* Vienna, Cologne, Weimar 2012, 317.

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independence.[10] After the end of the civil war in Bosnia and Herzegovina and the Dayton Agreement concluded in November 1995, in which Kosovo once again was not considered, the number of dissatisfied people in Kosovo increased due to a lack prospects. Attempts at achieving a certain autonomy from a stifling Serbian dominance that determined all aspects of everyday life failed repeatedly. Kosovo Albanians considered the education agreement signed in 1996 to be a mere case of lip service paid by Belgrade.[11] The anticipated participation in the education sector of Kosovo did not happen. The time in which an international resolution of the problem had a chance of success passed rapidly, and Rugova's influence waned in equal measure. Subsequently, the number of militants increased. Although even as late as 1997, the Kosovo Liberation Army (KLA or UÇK), which had been founded in 1992, consisted of a mere 150 fighters; however, their attacks against Serbian or Yugoslav security forces, which had started in 1995, triggered a cycle of violence that finally escalated at the beginning of 1998. The seriousness of the situation is revealed in the fact that an International Contact Group for Kosovo was launched on 8 January 1998.[12]

In addition to the Serbian para-military troops of Željko Ražnjatović 'Arkan' and 'Kapetan Dragan', 10,000 regular police forces and special units of the Serbian Ministry of the Interior as well as 11,000 to 12,000 military personnel of the Yugoslav army (Vojska Jugoslavije, VJ) were stationed in Kosovo in mid-February. In March, they were reinforced with another 4,000 police forces and 5,000 military personnel. On 2 January 1998 and on 28 January 1998, Serbian paramilitary troops had attempted to capture the leader of the Jashari clan, Adem Jashari, but were repelled.[13] The situation got eventually out of control when Belgrade launched a relief strike after a mass rally against Serbian violence of more than 100,000 people in Pristina. With the help of a large-scale police operation in the Drenica Valley, a KLA stronghold, from 4 to 7 March 1998, Belgrade tried to get hold of Adem Jashari, one of the KLA leaders. On 5 March they attacked Prekaz, the home village of the wanted person. In the course of the subsequent two days of battle, Adem Jashari, from the Serbian point of view a terrorist, and his family, more than 50 people in total, were killed.[14] Since the beginning of the unrest on 28 February, more than 80

10 Sundhaussen (n 10) 367.
11 Rafael Biermann, *Lehrjahre im Kosovo. Das Scheitern der internationalen Krisenprävention vor Kriegsausbruch* (Verlag Ferdinand Schoningh 2006) 508 ff.
12 PA AA, Zwischenarchiv, vol. 223 994.
13 Biermann (n 11).
14 Sundhaussen (n 10) 370 f.

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people,[15] including women and children, had died a violent death. In the subsequent days, pictures reminding the public of Bosnia were shown around the world, and questions about new attempts at ethnic cleansing were raised. Concerns for the stability of the entire southern Balkan region were a decisive factor for the international community to feel forced to act.

3 Interactions and Dynamics of Political and Military Actions

Only a few weeks after the escalation of the Kosovo conflict in late February/early March 1998, the intensity of the fights had increased considerably. Many Kosovo Albanians had been expelled from their hometowns and villages. The German federal government was afraid that Germany would be confronted with a similar influx of refugees like it had been at the beginning of the decade after the civil wars in Croatia and Bosnia and Herzegovina had broken out.[16] At the time, there had been fierce domestic debates about the refugees' right of residence. In the spring of 1998, Minister of the Interior Manfred Kanther (CDU) feared negative effects on the domestic security of Germany with reference to crime statistics. In addition, federal elections would be held in autumn.[17] Those fears were not realised. During the period from the escalation of the Kosovo conflict to the beginning of the NATO air strikes on 24 March, some 100,000 to 150,000 Kosovo Albanians fled the crisis region.[18] In 1998, 30,794 people of Albanian ethnicity from the FRY submitted a request for asylum in the Federal Republic of Germany.[19] Nevertheless, these domestic assessments are one aspect that explains the behaviour of Germany as a foreign and security actor in dealing with the Kosovo conflict in the spring of 1998. At the same time, the high numbers of refugees were suited for a legitimation of a possible intervention in the Kosovo conflict both domestically and internationally. This might explain why in addition to the Minister of the Interior Kanther

15 Statement by the Contact Group, London, 9 March 1998. In: Marc Weller, T*he Crisis in Kosovo 1989–1999. From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities*, (*International Documents and Analysis*, vol. 1, Documents & Analysis Pub. 1999) 235 f.

16 Roland Friedrich, *Die deutsche Außenpolitik im Kosovo-Konflikt* (VS Verlag für Sozialwissenschaften 2005) 41.

17 'Kehr um, Milošević!' (*Der Spiegel* 15 June 1998) 135.

18 Antje Scheidler, Ralf Ulrich and Stefan Alscher, 'Balkan: Über zwei Millionen Flüchtlinge und Vertriebene' (1999) 4 *Migration und Bevölkerung* 1–3.

19 Biermann (n 11) 615. The data were compiled by Biermann and verified by the German Federal Office of the Recognition of Foreign Refugees.

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also Federal Chancellor Helmut Kohl (CDU)[20] and amazingly enough – after a coalition of Social Democrats and Green Party took over government in the autumn of 1998 – also Social Democratic Federal Chancellor Gerhard Schröder pointed out the large number of refugees Germany had accepted from former Yugoslavia and the costs involved as well as the aspects of domestic security.[21] Another driving force was Germany's aspiration to act as an equal international actor in security politics.[22] In continuation of its multilateral foreign and security policy, Germany continued to act in a self-confident manner also after the end of the Cold War. As previously, the German federal government saw limited scope for action in foreign and security policy where the employment of German armed forces was concerned.[23] The subsequent process of foreign policy learning and adaptation as well as the domestic debate about the use of military force in international operations were the prerequisite for the German federal government to achieve great success in their actions in the Kosovo conflict despite and sometimes because of the use of military means.[24]

Therefore, Germany and France considered military options of deterrence in order to contain the Kosovo conflict and in the process ensure regional stability in the Balkans. For reasons of legitimation, the US government could envision a US participation in military activities against the Federal Republic of Yugoslavia only in the multilateral context of NATO. In view of the principle of consensus, which only allowed for joint action, the Security Advisor of US President Bill Clinton, Sandy Berger, in particular, feared NATO would fail. This had to be avoided by any means. According to the pragmatic political realism of the United States, threats – whether economic or military – needed to be practical. These ideas of credibility depended on a united scenario of intimidation of the NATO countries. Furthermore, the US Administration was already tied down by having threatened Iraq with military consequences after the weapons inspections had reached an impasse. With a view to the domestic

20 Helmut Kohl, *Berichte zur Lage 1989–1998. Der Kanzler und Parteivorsitzende im Bundesvorstand der CDU Deutschlands*, (Forschungen und Quellen zur Zeitgeschichte, 64, Droste 2014) 1021.

21 Deutscher Bundestag, Plenarprotokoll 13/248 of 16 October 1998, 23136, speech by Schröder.

22 Deutscher Bundestag, Plenarprotokoll 13/248 of 16 October 1998, 23142, speech by Joschka Fischer; Deutscher Bundestag, Plenarprotokoll 13/248 of 16 October 1998, 23137, speech by Schröder.

23 Kriemann, *Hineingerutscht?* (n 8) 430.

24 Cf. Antti Seppo, *From Guilt to Responsibility and Beyond. The Evolution of German Strategic Culture after the End of the Cold War*, (Sozialwissenschaftliche Studien des Zentrums für Militärgeschichte und Sozialwissenschaften, 22, Berliner Wissenschaftsverlag 2021) 135 ff.

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challenges of the Clinton-Lewinsky scandal,[25] Security Advisor Berger, in particular, was not interested in exposing other areas of conflict.[26]

Subsequently, the Franco-German tandem explored options for assigning this task to the Western European Union (WEU). This soon failed, however, because the German Federal Government did not think it was in a position to make a military contribution. The Franco-German talks centred on the surveillance of the Kosovar border with Albania. Based on the experiences in Bosnia, the Germans feared that an escalation of the situation could indeed necessitate the use of military coercive measures during such a mission. For Germany, this was an option, only if there was a mandate for the employment of armed forces as specified in Chapter 7 of the UN Charter as a matter of principle also for reasons of domestic legitimation. The German Federal Government feared, however, that a veto in the United Nations Security Council might prevent such a mandate.

On 1 April 1998, Foreign Minister Klaus Kinkel and Minister of Defence Volker Rühe discussed possible military implications of the further conflict resolution process. Two days later, after careful consideration, the German Federal Ministry of Defence rejected all proposals of the German Foreign Office with the exception of a participation in a potential follow-up mission of the United Nations Preventive Deployment Force (UNPREDEP) in Macedonia.[27] As a result, the number of WEU police advisors in Albania was increased from 60 to 100 police officers; by the way the only WEU participation in this conflict.[28] After the hoped-for dialog between Belgrade and Pristina did not come about within a week after the last meeting of the Contact Group of 25 March 1998 as the German Federal Government had hoped, and the prospects for a diplomatic solution continued to fade, the German Foreign Office in the person

25 US President Bill Clinton was accused of having had a sexual relationship with intern Monica Lewinsky and lied about it. The affair became public knowledge in January 1998. The impeachment proceedings against Bill Clinton, which had been initiated in early January 1999, ended with his acquittal on 12 February 1999.

26 Madeleine Albright, *Die Autobiographie* (Bertelsmann 2003) 464; Cf. Daalder and O'Hanlon (n 2) 30.

27 Since 31 March 1995, the United Nations Preventive Deployment Force (UNPREDEP) as follow-up mission of UNPROFOR had been tasked with the surveillance of the borders of the Former Yugoslav Republic of Macedonia (FYROM) in order to contribute to the stability of the republic and the region. URL: http://www.un.org/Depts/DPKO/Missions/unpred_p.htm.

28 Cf. WEU Ministerial Council, *Rhodes Declaration*, 12 May 1998 and WEU Ministerial Council, *Rome Declaration*, 17 November 1998. In: Weller, (n 15). The Multinational Advisory Police Element (MAPE) was a multinational advisory police contingent of the WEU in Albania.

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of Political Director Wolfgang Ischinger approached the US Administration in Washington. Talking to Assistant Secretary of State Strobe Talbott, to representatives of the United States National Security Council (NSC) and of the Pentagon, he tried to convince the US Administration that the situation required the leadership of the United States of America. The only solution for the current blockade that promised success would be the US 'shuttle diplomacy' between Belgrade and Pristina. It was also necessary to include military actions when considering options. Since the WEU would not have been a feasible option according to the German Ministry of Defence, a solution within the framework of NATO would also require US leadership. The US Department of State, especially Talbott who assumed that he would be given the task, was very interested in this proposal. He even asked Ischinger to present his statements on the necessity of a military component to the Pentagon and the NSC.[29]

The idea to build a credible military threat scenario against the Federal Republic of Yugoslavia had fallen on sympathetic ears, especially in the US Department of State. And yet, until the second half of May US Secretary of State Madeleine Albright failed to overcome the resistance of the White House. After European military measures had been deemed impossible, the French and Italian governments introduced the idea of military measures into NATO in early May 1998. The German Foreign Office had been informed. However, it preferred that Germany did not initiate the examination of military options but later supported the French-Italian proposal. At that time, the German Federal Ministry of Defence still tried to convince NATO to drop the development of a military threat scenario against Slobodan Milošević, the President of the FRY.[30] It was not alone in this opinion; the US Pentagon was also very sceptical about this idea.[31]

The analysis of the conduct of the German Federal Government in the search for international solutions of the Kosovo conflict revealed interesting details regarding the functioning of German foreign and security policy. There was a disagreement between the German Foreign Office and the German Federal Ministry of Defence with regard to the question of whether and how credible military pressure should be used as a political instrument.[32] Interestingly,

29 Zwischenarchiv (n 12) 997.

30 BArch, BW 2/34949, BMVg, Fü S III 6, Einsatz ehem. Jugoslawien, Vorlagen 21/22 von 03/1998 bis 10/1998, Vorlage an den Bundesminister der Verteidigung vom 30. April 1998, Betr.: Treffen der Politischen Direktoren der Kontaktgruppe in Rom am 29. April 1998, 2.

31 Cf. Daalder and O'Hanlon (n 2) 30.

32 Zwischenarchiv (n 12) 998, Bonn, 7 May 1998, *Betr.: Kosovo-Konflikt, hier: Möglicher Beitrag verstärkter internationaler, insbesondere militärischer Präsenz, zu den Zielen der KG-Politik aus deutscher Sicht*.

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something similar was observed within the US Administration. While the two ministries of defence were rather reluctant to use military means, the two foreign ministries were more inclined to favour them. This can only surprise at first glance, however. Behind it lies a different strategic understanding:

Both in the German Foreign Office and in the US Department of State, the threat of military activities of NATO against Milošević was a political instrument along with other political and economic sanctions for instance to enforce political interests. These different foreign policy instruments allowed for actions tailored to the specific situation. In the opinion of foreign policy experts, the threat of military means was a leverage to achieve political objectives. In so far it did not present a moral or ethical problem since the foreign policy actors did not really intend to wage war, rather according to their understanding they only threatened with war.

This opinion, however, was diametrically opposed to the operational military understanding of the use of armed force. In the latter event, the military, in this case NATO and its member states, in certain scenarios needed to be capable of implementing the threatened use of force not only theoretically but also in specific situations in practice. This required credibility which in turn implied the capability to implement an appropriate military structure, equipment and training. In line with this logic, the ministries of defence and military officials understood that a threat to use military force should only be made if those who made it were ready and able to employ it as an ultimate consequence. Otherwise, NATO and its national armed forces would forfeit their credibility, according to military officials. This would result in a loss of power and thus a limited protective function.

In the present instance, this way of military thinking was shaped to a considerable degree by the US view, which obviously had been adopted or shared by German Federal Ministry of Defence officials, with Federal Minister Volker Rühe himself at the top but also by the Chairman of the NATO Military Committee, German General Klaus Naumann.[33] Once made, the threat of military use had to be carried out in order to maintain credibility.[34] 'We wanted to

33 Interview of contemporary witness General (ret.) Klaus Naumann in Munich on 9 December 2014.

34 Cf. Jeffrey Goldberg 'The Obama Doctrine. The U.S. president talks through his hardest decisions about America's role in the world'. (Interview of US President Obama, *The Atlantic*, April 2016) http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/; On the role of domestic obligations to use military force in US foreign and security policy see: Stephan Böckenförde, 'Militärische Gewalt als Mittel künftiger amerikanischer Außenpolitik' (2001) 4 *IPG* 398–411, 399; On US hegemonial foreign policy

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avoid empty rhetoric as we tried to multilateralise the threat of force'.[35] stated Berger later in an interview with Ivo H. Daalder and Michael E. O'Hanlon.

This explains the initial rejection and unease of the German Federal Ministry of Defence, of Federal Minister Rühe and General Naumann but also of the US Department of Defence about military options to create a credible threat scenario as leverage in the political solution process. After the meeting of NATO foreign ministers in Luxembourg on 28 May 1998 and the decision of the North Atlantic Council to have NATO military authorities review options of preventive deployments of forces in Albania and Macedonia,[36] the perspective had shifted in favour of a review and planning of a possible military intervention at the latest at the meeting of the NATO defence minister on 11 June 1998.[37] It soon emerged that in particular the phased airstrikes of Operation Allied Force were best suited as leverage to support the political process.[38] Against this background, it becomes obvious why after the meeting of NATO defence ministers on 11 June 1998 when consensus was reached among NATO member states about the threat of military measures from the entire spectrum, it was the military officials in NATO and the relevant national ministries of defence who pressed ahead with the planning process on which the threats were based and who urged to implement these plans if Milošević did not cooperate.[39]

In the end, it was German and US foreign policy officials who insisted on the threat of military force against the advice of their respective fellow ministers from the other national ministries of defence. When the threats had been made, they started a military machinery, which on the basis of the underlying understanding resulted in the outbreak of the air war of NATO against

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see Peter Rudolf, *Amerikapolitik. Konzeptionelle Überlegungen zum Umgang mit dem Hegemon* (SWP 2006) 12 f. and 20 f.

35 Cited from: Daalder and O'Hanlon (n 2) 30.

36 Statement On Kosovo, Issued at the Ministerial Meeting of the North Atlantic Council held in Luxembourg on 28th May 1998. http://www.nato.int/docu/pr/1998/p98-061e.htm; Hans-Peter Kriemann, 'Germany's participation in the NATO intervention' in Bernd Lemke (ed) *Periphery or Contact Zone? The NATO Flanks 1961 to 2013* (Rombach Verlag KG 2015) 146–153.

37 Statement issued at the Meeting of the North Atlantic Council in Defence Ministers Session, 11 June 1998. In: Weller (n 15) 276.

38 On the operational planning of NATO see: Kriemann, *Der Kosovokrieg* (n 8) 37–50.

39 Interview of contemporary witness General (ret.) Klaus Naumann on 9 December 2014 in Munich. The former US Chairman of the Joint Chiefs of Staff and Secretary of State Colin Powell expressed similar logic; against this backdrop he demanded not to use the military as diplomatic leverage unnecessarily and set a high threshold for operations. Stephan Böckenförde, 'Militärische Gewalt als Mittel künftiger amerikanischer Außenpolitik' (2001) 4 *International Politics and Society* 402.

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the Federal Republic of Yugoslavia. This could easily have grown into a major European ground war. The fact that this was not a far-fetched idea becomes apparent when considering that the planning had started as early as mid-April 1999 at the insistence of NATO military officials after the air war did not have the desired success and Milošević seemed to be far from relenting.[40] This is also based on the idea of 'credible threats' and of thinking military operational actions through to the end.

In the case of Germany, after the military planning process of NATO had begun in the early summer of 1998, the advocates of the 'credible threat doctrine' succeeded in convincing the politicians that it was absolutely necessary to implement the threat from the fall of 1998. The US government had already decided in favour of this in the summer of 1998. Beginning with the so-called Activation Warning of NATO for the planned air operations of 23 September 1998, the logic of military action successively complied with military thinking.[41] The pressure on the old and new federal government was huge; after the federal elections of 27 September 1998 a change towards a government coalition of Social Democrats and Alliance 90/The Greens was on the horizon. On the side-lines of the meeting of the Contact Group of 8 October 1998, US Secretary of State Madeleine Albright had urged Kinkel to achieve ACTORD on the weekend of 10 to 11 October 1998.[42] US special envoy Richard Holbrooke made clear that Milošević banked on Germany's non-participation and the related signal for other European NATO countries.[43] On 12 October 1998, the old federal government decided in close coordination with the new majority after a short talk in the small cabinet room to approve of ACTORD and to provide for a participation of German armed forces. In view of the situation, there was no alternative to that decision, as Fischer stated.[44] When NATO decided on the Activation Order on 13 October 1998, all NATO partners had followed

40 On the operational plans of a violent invasion of NATO ground forces into Kosovo see: Kriemann, *Der Kosovokrieg* (n 8) 107–118.

41 Although UN Resolution 1199 of 23 September 1998 under Chapter 7 of the UN Charter did not explicitly authorize the use of military force but the US Administration used the informal meeting of NATO defence ministers to make the member states discharge their duties. NATO Defence Ministers Meeting in Vilamoura, 24 September 1998, Press Conference Secretary of Defense, William Cohen and U.S. Chairman of the Joint Chiefs of Staff, General Henry S. Shelton. http://www.nato.int/docu/speech/1998/s980924c.htm.

42 AA PA, Zwischenarchiv, vol. 224000, memo dictated by Kinkel on board of his aircraft on 8 October 1998.

43 Joschka Fischer, *Die rot-grünen Jahre. Deutsche Außenpolitik-vom Kosovo bis zum 11. September 2001*, (2nd ed. Kiepenheuer&Witsch 2007), 104.

44 *Ibid.* 107.

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the 'credible threat' rationale, including France and Italy who had hesitated until the end, and above all the German Foreign Office. Until 12 October 1998, German Foreign Minister Klaus Kinkel had refused to approve a participation of German armed forces in the air operations without a valid mandate of the United Nations. In the end, all NATO member states approved.

Ultimately, the responsible officials in NATO and Germany had agreed that a short engagement with manageable losses and costs was the smaller and thus more acceptable evil than an assumed loss of credibility and power following the non-implementation of a threat once made. This in turn would have reduce the security of or increased the threat to the Alliance and thus the own country.

Obviously, wars cannot be easily calculated. In 1999, the NATO member states officials could not imagine not to follow through with the engagement once they had threatened Milošević. Just like we today, they could not have known what would have happened otherwise.

4 The Relationship between National Interests and Legitimacy

In addition to such interactions and dynamics of the conduct of political actors and military planning processes, national interests continue to be crucial factors in deciding whether and when a military intervention takes place, and in questions of legitimacy. In the case of Kosovo, all international actors tried to use the question of a UN mandate as prerequisite for a military intervention to achieve a greater scope of action for themselves.

These international attempts at conflict resolution were also an important means to establish the position of the United States and the great European powers as well as Russia towards each other, and the future role of NATO, EU, OSCE and UN. This required the development or further development of mechanisms, forums and institutions to coordinate between the actors that had emerged during the Cold War.

Initially, international action was blocked by an unresolved conflict of interests between the United States and Russia on the one hand and between the United States, Russia and the European members of the Contact Group Germany, France and Great Britain on the other. Basically, the conflict revolved around the necessity of military intervention of NATO in Kosovo as well as around the legitimacy of this action with an UN mandate under Chapter 7 of the United Nations Charter.[45] It was only due to the increasing escalation – the air war of NATO against FRY and the war of Serbia against the Kosovo Albanians

45 Zwischenarchiv (n 43); Daalder and O'Hanlon (n 2) 44.

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on the ground, which resulted in a humanitarian disaster in Kosovo, that the international community agreed on UN Resolution 1244 and thus a stabilisation by means of UNMIK and KFOR.

The Kosovo conflict can thus be regarded as an important driving force for coordinated European action within NATO which allowed the Europeans to prevail over the US when the air strikes were at peak. The Stability Pact for South Eastern Europe allowed for an increasing Europeanisation of conflict resolution based on a perspective of European integration.[46] It also revealed how much the national interests of all actors behind the handling of the conflict affected both the efficiency of conflict resolution and the legitimation through a UN mandate and to what extent these aspects are interconnected.

While consensus on credible threat and thus ultimately the use of military force had existed since 11 June 1998, there was disagreement about the legal requirements of such a humanitarian intervention within the Alliance between the United States and the European member states. Since the first meetings of the Contact Group, Russia had already indicated that it would absolutely veto a Chapter 7 mandate of the UN Security Council as a basis for legitimation of a military intervention of NATO in this conflict. This position was not primarily the result of Slavophile attitudes in the public and political debate in Russia as German media wrote even as late as in the spring of 1999. In fact, Moscow wanted to prevent the precedent of a UN legitimised military intervention of NATO in an internal conflict.[47] Given that conflicts and signs of disintegration that took place in former Yugoslavia were also happening in Russia and on its periphery, the Russian government wanted to prevent such an intervention in its internal affairs under any circumstances. This was not only true for the independence efforts on Russian territory, like for example in Chechnya, but it also concerned territories which the former superpower perceived as its immediate area of interest and influence, like Ukraine or Georgia.

The United States did not even think of making their actions and those of NATO dependent on Russian agreement.[48] The Washington Administration tried to use an intervention of the Alliance without its being authorised by a mandate of the UN Security Council to create a precedent. In doing so, the US

46 Cf. Rafael Biermann, *The Stability Pact for South Eastern Europe – potential, problems and perspectives* (ZEI Discussion Paper 1999) 56, 13 f; Cf. Michael Gehler, '"Zentralmacht Europas?" Die Berliner Republik außer- und innerhalb der Europäischen Union' (*Die Berliner Republik*) 91–122, S. 99 ff.

47 Albright, (n 26) 463.

48 *Ibid.* 465.

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Administration hoped for more leeway in designing foreign and security policy in the future.

This was exactly what the European NATO partners tried to prevent. It would have reduced their influence on foreign and security policy to the same extent. Theoretically, Great Britain and France as veto powers would be able to block mandates of the UN Security Council. At the very least, the US Administration was forced to consider this fact. For the Europeans, including the Germans, the role of the former super power and veto power in the UN Security Council Russia was much more important, however. A mandate of the UN Security Council as basis for legitimation of NATO actions forced Washington to come to an agreement with Moscow. To achieve this, it really needed Germany and France as mediators. Great Britain, on the other hand, could second the United States towards France, a role that was occasionally also assumed by the German Federal Government. Without Germany, it was impossible to make decisions like the international approach to solve the Kosovo conflict. This was an advantage, which the German Government could fully exploit. NATO, EU and OSCE were important stages for Germany to shape policy. Interestingly, it was, above all, the veto position of Russia in the UN Security Council which allowed the Europeans to assert their own interests towards the United States, including in NATO.

The rule of consensus allowed a participation within NATO, however, the Bosnian War and also the Kosovo conflict had already shown that without the military capabilities of the United States it was impossible to generate credible pressure. The Europeans did not have the capabilities and means necessary to solve this conflict, notwithstanding the WEU. And indeed, the US Administration threatened the Europeans, who were faced with the immediate consequences of the Kosovo conflict and wished for its rapid resolution, that they would have to solve the conflict on their own if they did not cooperate.[49] It takes a look at the interactions of this network of military capabilities, government interests and the question of legitimacy to explain why the air war of NATO against the Federal Republic of Yugoslavia began without a UN mandate on 24 March 1999. Nevertheless, as a result of the resistance and the uneasiness of the European members of NATO, the US and NATO were forced throughout the conflict to continuously include and coordinate with Russia.

49 During the informal meeting of NATO defence ministers in Vilamoura (Portugal) US Secretary of Defence William Cohen told the German Minister of Defence Volker Rühe (CDU): "It's a challenge to NATO's credibility. If the Europeans don't want to take action, the US will leave it to them. The Congress is still fighting over Bosnia." Interview of contemporary witness Brigadier General (ret.) Dr. Klaus Wittmann on 8 August 2014 in Berlin.

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Germany, in particular, attached great importance to this.[50] Despite its historically shaped transatlantic orientation, Germany as European central power had a vital interest in a good political relationship with Russia, which would become a strategic imperative of German foreign and security policy over the years. In this respect, it was also of great importance to Germany that the partners in Washington were unable to simply ignore Russian interests. Eventually, it would have been the Western neighbours of Russia who would be faced with the direct consequences of diplomatic resentment or conflicts between Russia and the United States.

Beyond the legitimation in both the international and national arenas, the existence of a UN mandate allowed the European members of NATO more leeway in dealing with such conflicts. As a result, Germany and France in joint coordination with the other European members of NATO were able to prevail at the NATO anniversary summit in Washington on 24/25 April 1999 that as a rule military intervention required a mandate of the United Nations as basis for legitimation.[51] For a start, a shift in or the undermining of the United Nation's monopoly on the use of force was avoided, and the participation of Russia in issues of European foreign and security policy was secured. By the way, this makes it easier to understand why after the attacks of 11 September 2001, the then NATO Secretary General Lord Robertson called on Washington to invoke Article V of the NATO Treaty. It was thus ensured that the following NATO operations were conducted under the UN Charter. Unilateral action of the United States was hereby contained early on.

5 The Kosovo Conflict and the Responsibility to Protect

The conflict between national interests and the challenges of the crises and conflicts necessarily raises the question of how to prevent the erosion of United Nations mandates and norms.[52] In the aftermath of the Kosovo conflict an international negotiation process took place which resulted in the formulation

50 Cf. Seppo (n 24) 143.

51 AA PA, Zwischenarchiv, vol. 254714, 20 April 1999, Subject NATO summit in Washington (23–25 April 1999), here: State of summit preparations; AA PA, Zwischenarchiv, vol. 254715; On the position of France regarding the enhancement of the role of the Europeans. Cf. BArch, BW 2/39089, BMVg Fü S V 2 G 4, *Kosovo Lessons Learned*, vol 1, Subject 'Les enseignements du Kosovo', 8 f.

52 On the conflict between the responsibility to protect and the interest of states and organisations using the example of NATO action in Libya in 2011. Cf. Lars Brozus, Christian Schaller, *Über die Responsibility to Protect zum Regimewechsel*, (SWP 2013).

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of an UN-legitimised intervention as an understanding of the concept of the responsibility to protect.

As a result of the dissolution of the structure-forming East-West conflict the international community was faced with new security challenges in the form of a disintegration of states, fragile or non-existent statehood and the resulting increasing domestic conflicts. The handling of Bosnia and Herzegovina as well as of Somalia has proven to have been a cautious approach in a learning process of trial and error. Despite these experiences, the conflict management in Kosovo was achieved only by means of a short-term situational resolution and at the expense of the United Nation's exclusive right to use force. Although a basic consensus on conditions for intervention and procedures had been achieved in the course of these international attempts at conflict resolution, there was still a lack of normatively and legally recognised rules. Military operational procedures and approaches were a particularly controversial issue. This can only surprise at first glance, however. The relationship between government interests, legality and legitimacy had a massive impact on the operational implementation of interventions, as explained in the previous section.

In view of these experiences, UN Secretary General Kofi Annan suggested an international negotiation process to reach a consensus on options for the international community to deal with massive government failure. In the subsequent year, the report of the International Commission on Intervention and State Sovereignty (ICISS), an independent commission initiated by the Canadian government, came to the conclusion that the primary task of a state should be the protection of human rights and prevail over sovereignty. If a state is unable or reluctant to ensure this, the report granted the international community a surrogate function and derived rights to interfere with the sovereignty of the state concerned.[53] The 2000 Brahimi Report had already discussed questions regarding a more efficient operational implementation of future UN missions immediately after the Kosovo War. With a view to previous experiences from humanitarian interventions this necessarily raised the issue of the significance of the military. As a result, the issue of military intervention occupied a major part of the report; however, it specified three responsibilities: To prevent, to react and to rebuild. Priority was given to the concept of prevention. Nevertheless, in the event of large-scale loss of life and ethnic cleansing it granted external actors the option of military intervention into the sovereignty of another state. For this purpose, certain requirements needed to

53 ICISS, The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty, 200 http://responsibilitytoprotect.org/ICISS%20Report.pdf.

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be met: a sincere intention, proportional means, the failure of other means, reasonable prospects and a United Nations mandate.

The United Nations soon seized on the results of ICISS. The consensually adopted UN Report 'A more secure world – Our shared responsibility' of 2 December 2004 confirmed the results of ICISS of 2001.[54] Experiences of the international community gained in UN peacekeeping missions and interventions of the 1990s as well as the related international debate about options to intervene for the protection of human rights eventually resulted in the adoption of the Outcome of the World Summit of the Heads of State and Government on the occasion of the 60th anniversary of the United Nations in New York from 14 to 16 September 2005.[55] Item 139 states the commitment

> [...] .. We are prepared to take collective action, in a timely and decisive manner, through the Security Council in accordance with the Charter, including Chapter 7, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[56]

This defined the concept of a UN – legitimised intervention as understanding a 'Responsibility to Protect'. Its weak point, however, is that compared to early versions, it does not contain criteria to define threats and mandatory mechanisms of joint action to facilitate decisions about an intervention of the international community and prevent a deadlock like in the Kosovo conflict.

6 The Kosovo Conflict as a Milestone in International Intervention Practice?

Concluding, I would like to return to the so-called Račak massacre. Similar to Srebrenica in the war in Bosnia and Herzegovina, it confronted the international community mercilessly with the question of how to deal with ongoing human rights violations and the resulting refugee movements in Europe and

54 Johannes Varwick, 'Humanitäre Intervention und die Schutzverantwortung ('Responsibility to Protect'): Kämpfen für die Menschenrechte?' (2009) 25 *Kieler Analysen zur Sicherheitspolitik* 9 f.

55 Resolution 60/1 World Summit Outcome 2005 https://undocs.org/A/RES/60/1.

56 *Ibid.* item 139.

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all its consequences. The key moral question behind was how to organise the future coexistence in Europe. It was necessary to restrain aggressive politics based on nationalism and to create a Europe of integration instead.[57] When violence had dramatically escalated and gone along with forced displacements in Kosovo in the spring of 1998, it led to a humanitarian obligation for the Europeans, especially in view of the painful experiences in Bosnia. As a result, NATO was to make a credible threat to finally end the ongoing human rights violations, prevent a humanitarian disaster and ensure a safe return of refugees.

Ultimately, the NATO air strikes as one of several important instruments in the political process did not only help to end displacement and mass migration of Kosovo Albanians and contain violence in general. Above all, they bought time for the political process.[58] KFOR and UNMIK were instruments and ground-breakers of this political process. Given the absence of administration, legal system and functioning police, and in view of government institutions that were largely incapable or hardly capable of acting, UNMIK exercised influence on the inhabitants of Kosovo in all spheres of life. For this purpose, it had been tasked by United Nations Security Council Resolution 1244 of 10 June 1999 with the establishment of an interim civilian administration in Kosovo. For the first time in their history, the United Nations took on broad responsibility also with an executive mandate. The prerequisite for successful action was the NATO -led Kosovo Force (KFOR) that entered Kosovo on 12 June 1999 with legitimation by UN Resolution 1244.

Unlike the symmetric scenarios of the Cold War, such stabilisation operations did not aim at defeating an enemy. The basic objective was to protect the population. The multinational contingents were confronted with extremely complex security situations in the areas of operation. Enemy forces operated among the civilian population, sometimes deliberately against them. In the absence of identification and in defiance of other conventions of international law, it was often impossible to recognise them; their structures and military objectives were unpredictable, their armaments and funding interwoven with organised crime. This asymmetric conflict gave rise to the question of how to use military force in such a manner that it is possible to create a safe environment to reconstruct the state on the one hand and to protect the civilian population on the other. This could only be achieved with a wide and finely

57 Deutscher Bundestag, Plenarprotokoll 13/248 of 16 October 1998, 23142, speech by the designated German Federal Minister for Foreign Affairs Joschka Fischer (Alliance 90/The Greens).

58 Kriemann, *Hineingerutscht?* (n 8) 405.

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tuned range of different capabilities and intensities of a permanently changing mixture of high to low-threshold military operations and by fulfilling police tasks. The multinational character, which gives such operations a higher level of legitimacy, also requires a high degree of consultations among the national contingents.

In Kosovo, the robustly armed international KFOR of 50,000 military personnel was to supervise the withdrawal of the heavily armed VJ and the Special Police troops as well as the disarmament of KLA. At the same time, it was necessary to avoid a security vacuum. Acts of revenge among the Serbian civilian population by KLA but also among Serbian security forces had to be prevented. That this was a real concern, is confirmed by at least 1000 Serbian victims who were killed until late 2000 in acts of revenge despite the presence of KFOR.[59] This illustrates in a tragic manner the challenges involved in such stabilisation operations.

Nevertheless, KFOR and UNMIK succeeded in granting the inhabitants of Kosovo, which constitutionally continued to be part of Serbia, an autonomous existence until the question of the status of the province was decided. Meanwhile, the province was largely stabilised, and since 2008, it has been the youngest European state. Against this backdrop, there is every reason to note that was a successful military operation: NATO succeeded in ending the Kosovo War and in sustainably containing violence. Despite these successes, the political situation in the country continues to be difficult, organised crime remains a problem. The status under international law is a matter of controversy. So far, Serbia and Russia, but also other states like Spain, have not recognised Kosovo as an independent state. Unfortunately, the regional conflict

59 In their 2001 report 'Under Orders: War Crimes in Kosovo', Human Rights Watch criticise that after the arrival of KFOR, KLA and ethnic Albanian civilians carried out widespread burning of homes belonging to Serbs, Roma and other minorities and forced the inhabitants to flee. Like the destruction of Orthodox churches, harassment and persecution, this large-scale and widespread approach was intended to establish ethnically homogeneous areas as prerequisites for the desired independence of Kosovo. Members of minorities were illegally detained, beaten and tortured. 1000 Serbs and Roma were missing and unaccounted for. Some 150,000 members of minorities fled the Kosovo within the first six weeks of KFOR's initial deployment. Human Rights Watch, 'Under Orders: War Crimes in Kosovo' (*HRW* 2001) https://www.hrw.org/reports/2001/kosovo/undword2c.html. The mission diaries of the German KFOR contingent are testimony of acts of revenge especially against Serbs and confirm that often German military personnel was forced to protect Serbian soldiers and the Serbian population. BArch, BW 79/18, *ETB 1. Ktgt KFOR 24.02.-29.07.1999*, Kdr MNB S, 256 ff.; Cf. Göbelt, *Ermordung und Verfolgung der Kosovo-Serben nach dem Ende des Krieges*, 92.

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continues to smoulder. After more than 20 years, KFOR is still present albeit with a reduced number of 3760 military personnel.[60]

The sometimes-painful experiences of international states and organisations in Kosovo, like in Bosnia and Herzegovina before then, had advanced the development of conflict management mechanisms and the associated juridification process through the need for specific action more strongly than the normative debate that was initiated following the Kosovo conflict had been able to do. The latter was unable to prompt the national states, in particular the veto powers of the UN Security Council, to restrict their own interests in favour of the Responsibility to Protect to such an extent that would have been necessary to establish effective decision mechanisms in the United Nations. In practice, national interests determine the political processes in the international arena.[61] The precedent debate shows in the case of Kosovo to what extent the diplomatic process to resolve a regional conflict was intertwined with national interests, international actors and organisations and influenced by them.

The absence of immediately available effective conflict resolution mechanisms does not mean in any way that the sometimes-painful experiences the international community had made in crisis regions in earlier years were all for nothing and neither was the resulting international debate. It

> [...] has had an influence on the intensive policy debates that are taking place especially within the military, ministries of defence and international organisations – the debates about counter-insurgency in the Pentagon, for example, or about human security in the European Union and indeed about non-traditional approaches to security in general.[62]

Therefore, the handling of the Kosovo conflict was a milestone in the practice of international interventions. The Responsibility to Protect is the important acknowledgement that it is the commitment to human rights which constitutes the coexistence in the 21st century. Not only would such an understanding have been unthinkable half a century before, the acceptance and

60 Cf. Euronews Desk Brussels, 'Stillstand bei Normalisierungsgesprächen zwischen Kosovo und Serbien' (*Euronews,* 19 July 2021) https://de.euronews.com/2021/07/19/stillstand-bei-normalisierungsgesprachen-zwischen-kosovo-und-serbien; On the current strength of NATO-led KFOR see: https://jfcnaples.nato.int/kfor/about-us/welcome-to-kfor/contributing-nations.

61 Cf. Aidan Hehir, 'From Human Security to the Responsibility to Protect: The Co-Option of Dissent?' (2015) 23, 3 *Michigan State International Law Review* 675–699, 697.

62 Mary Kaldor, 'In Defence of New Wars' (2013) 2, 1 *Stability: International Journal of Security and Development* 1–16, 14.

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distribution of R2P also reveals how speedily this term became an integral part of the international debate. From a political science perspective, it was standard setting. The handling of the Kosovo conflict advanced the evolvement of an international legal system to manage domestic crises and conflicts that are likely to involve the danger of massive human rights violations and pose a threat to international stability and security. This marks an important step, and it created the basic prerequisite for the continuation of a juridification process.

A look at the international missions in Afghanistan, and above all the past ten years, like for instance in Libya in 2011, give rise to the question whether R2P is just lip service. But its instrumentalization by actors does not immediately disavow the principle of R2P. Juridification processes take much time and are ambivalent. For a historian the commitment to the primacy of human rights is an image of humans understanding their time, and as is well known faith can move mountains.

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CHAPTER 5

An Honest Siege

'Weaponising Honesty' and Non-Lethal Measures in Urban Operations

Nick Melgaard

Summary

The aim of this chapter is to examine what we are willing to make sacrifices for, and the lengths we are willing to go to in making them. It is a collection of observations about an ancient feature of armed conflict, what characterises it today, and against what context these measures should be measured. Using the 'siege', I look at the use of non-lethal and information-based measures, apply elements of just war thinking to the use of information-based and non-lethal measures, and challenge the principle of war as a last resort. Ultimately this chapter is a discussion of the 'what is worse' comparisons that have become very familiar in just war thinking, and could be challenged by a different moral approach.

Keywords

just war theory – media and communication technology – digital propaganda – non-lethal measures

1 Introduction

If leaders were given an opportunity to achieve an objective without violence, it would surely be gratuitous and cruel for them to ignore it. The siege has long been a characteristically brutal feature of urban warfare, though recently certain actors have used non-lethal forms of coercion and manipulation to accomplish the same objective almost bloodlessly.

'Information operations' or 'digital propaganda' is quickly becoming an effective means of political influence. In terms of taking over a settlement, something that once required violence, might soon be possible without it. But what is war if not violence. When aggression is no longer essential to achieve what only aggression has historically been able to achieve, there is surely an

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ethical question at stake: what these new means ought to be compared to when they are assessed in moral judgment.

As the use of communication technology becomes almost ubiquitous in urban centres, this issue will become increasingly common. Cities represent the most complex and challenging environment in which military actions occur.[1] With the increasing urbanisation of populations, and the technological literacy that inevitably accompanies it, the potential for non-lethal measures, such as psychological manipulation, or social and political coercion through the media has become a significant aspect of modern armed conflict.

Modern sieges that use media and communications technologies compel us to ask the other *means-ends* question; whether 'war' is characterised by the methods used, or the ends sought.[2] Manipulating the media, and coercing populations is morally dubious. However, many morally reprehensible behaviours, might, when compared to armed conflict, suddenly not seem quite so bad.

The following is intended as a collection of observations on an ancient feature of armed conflict that has met modern technology. It is also a discussion of the context against which behaviour should be measured.

2 The Foundations of Ideas

> By the word "information" we denote all the knowledge which we have of the enemy and his country; therefore, in fact, the foundation of all our ideas and actions in war.
>
> C. VON CLAUSEWITZ

In 2014 a force of roughly 1,500 Islamic State (IS) fighters drove into the Iraqi city of Mosul almost unopposed. In the weeks leading up to the operation, IS media and press offices had saturated the internet with a backdrop of nearly 44,000 tweets a day. Fighters, supporters, and even curious bystanders had amplified the inevitable success of the group, terrifying the Iraqi forces who vastly outnumbered them into fleeing and leaving the city virtually undefended.[3] In a darkly millennial adaptation of historic pre-siege tactics, popular contemporary hashtags were also hijacked to amplify IS material.[4]

1 Alice Hills, *Future War in Cities* (Frank Cass 2000) 243.

2 David Whetham, 'Are We Fighting Yet? Can Traditional Just War Concepts Cope with Contemporary Conflict and the Changing Character of War?' (2016) 99, 1 *The Monist* 55–69.

3 Different estimates gauge Iraqi forces tasked with defending Mosul at c.10,000.

4 The Brazilian World Cup, for example.

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The ubiquity of smartphones allowed IS to reverse the media phenomenon of the Vietnam war: instead of bringing war into people's homes to repulse them away from waging war, it was used to desensitize them towards participation.[5]

IS also had a much longer-term approach to their manipulation of the media. The group's general narrative set them apart from other extremist groups; their promise was of a holistic, lifestyle choice.[6] They were offering Muslims not just a place where they could die as martyrs, but live as heroes.[7] Media outlets chose to show bustling bazaars, well-equipped medical facilities, tranquil family scenes, and in one particularly bizarre campaign, the 'Cats of the Caliphate' (a reference to Abu Huraira, a companion of the prophet Muhammed known to be fond of cats).[8]

By the time the Coalition had almost destroyed the Caliphate, the use of media and communications,[9] both in the long and short term was something IS became expert at. In October 2018 the group did something very distinctive, using information operations in defence. In one of the last remaining enclaves of the caliphate, near the town of Hajin, fighters identified that Coalition surveillance could not see through sandstorms.[10] IS fighters waited until there was such weather before launching attacks, which focused on capturing SDF prisoners.[11] These prisoners were then publicised for propaganda effect against a backdrop of Turkish incursions into Kurdish territory in Northern Syria,[12] in an attempt to

5 James P. Farwell, 'The Media Strategy of ISIS' (2014) 56, 6 *Survival* 52.

6 IS ran central media offices, such as the 'Al Hayat Media Centre', 'al-Bayan' radio, 'Himma' library, 'al-Naba' newspaper, and 'Amaq' news agency. Additionally, provincial outlets also generated content. Media releases such as *There is No Life Without Jihad*, *The Dawn of Glad Tidings*, and *The Rattling of the Sabre* all revealed an expert skill in compiling stories in video which were used to advertise IS to a global audience.

7 Nelly Lahoud, 'Metamosphosis: From al-Tawhid wa-al-Jihad to Dawlat al-Khilafa' in Muhammad al-Ubaydi, Nelly Lahoud, Daniel Milton, Bryan Price (ed), *The Group That Calls Itself A State: Understanding the Evolution and Challenges of the Islamic State* (CTC West Point 2014) 20; available at: https://www.ctc.usma.edu/posts/the-group-that-calls-itself-astate-understanding-the-evolution-and-challenges-of-the-islamic-state.

8 Farwell (n 5) 51.

9 Charlie Winter, 'Making Sense of Jihadi Stratcom: The Case of the Islamic State' (2019) 13, 1 *Perspectives on Terrorism*.

10 See: Francesco Bussoletti, 'ISIS Uses Sandstorm to Attack SDF' (*Difesa & Securezza,* 18 October 2018) https://www.difesaesicurezza.com/en/defence/syria-isis-tries-in-vain-for-new-attacks-on-the-sdfs-in-deir-ezzor/.

11 Seth Frantzman, 'ISIS Counter-Attack in Hajin' *The Jerusalem Post* (Jerusalem, 30 October 2018) https://www.jpost.com/Middle-East/Analysis-ISIS-counterattacks-in-Syria-threaten-Iraq-and-US-partners-570670.

12 'Turkish Forces attack SDF in North Syria' (*Haaretz,* 28 October 2018) https://www.haaretz.com/middle-east-news/turkish-forces-strike-kurdish-ypg-militia-positions-in-syria-1.6596926.

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shatter morale among the SDF. SDF fighters began to desert from the front line, and the Coalition offensive was delayed by six weeks.

The Coalition had learnt from IS and used many of these ideas when Mosul was eventually recaptured.[13] Michael Stevens[14] discusses the ironic turn of the recapture of Mosul. Whereas information activity had been used to capture the city, it was now being used to recapture it. Radio stations were set up to motivate protests and resistance movements, help the SDF target important IS locations, and encourage IS paranoia.

Urban operations are complicated largely because of the 'sheer density of people in a highly networked environment magnifies the degree to which politics and tactics are interwoven.'[15] Contrary to Betz and Stanford-Tuck, something very significant has changed. Although attempts to influence 'collective attitudes by the manipulation of significant symbols,' (as communications theorist Harold Lasswell[16] described contemporary propaganda), have been around for as long as there have been attempts to project political power, but, as Bjola comments, 'with the rise of social media they have simply exploded.' The growing popularity of social media networks makes it possible for digital messages to be disseminated widely, deeply, and quickly whether they are accurate or not, hence the rise of 'fake news' and 'post-truth' politics.[17]

The implications for our understanding of ethics in conflict are very serious. As Floridi comments, 'by radically changing the informational context in which moral issues arise, not only add interesting new dimensions to old problems, but lead us to rethink, methodologically, the very grounds on which our ethical positions are based.'[18]

The terms 'information warfare' or 'information operations' typically apply to the 'integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision making of adversaries and potential

13 BBC, 'How the Battle for Mosul Unfolded' (*BBC,* 10 July 2017) https://www.bbc.co.uk/news/world-middle-east-37702442.

14 Michael Stevens, 'Blood Between Us: Psychological Occupation and Resistance in Mosul' (2018) 163, 1 *RUSI Journal.*

15 David Betz; Hugo Stanford-Tuck, 'The City is Neutral: On Urban Warfare in the 21st Century' (2019) 2, 4 *Texas National Security Review* 64.

16 Harold D. Lasswell, 'The Theory of Political Propaganda' (1927) 21, 3 *American Political Science Review* 627.

17 Corneliu Bjola, 'The Ethics of Countering Digital Propaganda' (2018) 32, 3 *Ethics & International Affairs* 305–315.

18 Luciano Floridi, 'Information ethics, its nature and scope' (2006) 36, 3 *ACM SIGCAS Computers and Society* 23.

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adversaries while protecting our own.'[19] The current discussion of 'information warfare' is however saturated with the discussion of cyber operations. Taddeo comments that cyber operations has been officially listed as a theatre of war since 2010; 'It is ranked fifth after land, sea, air and space, because the ability to control, disrupt or manipulate the enemy's informational infrastructure has become as decisive as weapon superiority in determining the outcome of conflicts.'[20] With regards to information and communication technologies (ICTs), 'existing ethical theories of war and national international regulations struggle to address the novelties of this phenomenon.'[21]

Considering information warfare through the lens of just war theory (JWT) allows us to engage critically with new ethical issues, however the framework of JWT is not yet developed, and leaves many of modern issues unresolved. Taddeo and Floridi comment, 'like traditional warfare, IW is very powerful and potentially highly disruptive. However, unlike traditional warfare, IW is potentially bloodless, cost effective, and does not require military expertise. In short, ICTs have modified the costs of war, and hence our understanding and evaluation of them.'[22]

The issues surrounding cyber and other information-based capabilities are significant challenges in and of themselves. But people tend to acknowledge (sooner or later) when they have been subject to a cyber-attack. My focus is instead on the use of media and communications to shape perceptions. Surely it makes a difference to the ethical discussion whether the target of the attack believes they have been the target of an attack.

With this in mind, we might return to writers like Taddeo who summarise the broad appeal of non-lethal measures. 'If strictly applied to the non-violent instances of information warfare', she comments, 'the principle of more good than harm leads to problematic consequences. For it may be argued that, since IW can lead to victory over the enemy without incurring casualties, it is a kind of warfare (or at least the soft, non-violent instances of IW) that is always morally justified, as the good to be achieved will always be greater than the evil that could potentially be caused.'[23] It is the 'always' here that I am concerned with.

19 *Joint Publication 3–13: Information Operations*, 20 November 2014.

20 Mariarosarisa Taddeo, 'Just Information Warfare' (2016) 35, 1 *Topoi* 213.

21 *Ibid.* 213.

22 Luciano Floridi; Mariarosaria Taddeo, *The Ethics of Information Warfare* (Online edition, Springer 2014) 3.

23 Taddeo (n 20) 218.

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3 Louder than Words

> How yet resolves the Governor of the town?
> This is the latest parle we will admit
> Therefore to our best mercy give yourselves,
> Or like to men proud of destruction
> Defy us to do our worst. For as I am a soldier …
> If I begin the batt'ry once again
> I will not leave the half-achieved Harfleur
> Till in her ashes she lie buried.
>
> HENRY V, WILLIAM SHAKESPEARE

At this stage, I think it would be worthwhile trying to make a distinction. Not unlike Mosul, the town of Harfleur in Skakespeare's play eventually surrenders. Understandably. Henry V threatened to kill all the town's civilians and sack the city if they did not. Now in literal terms, this was a case of non-lethal force. His actions, non-lethal as they technically were, undoubtedly saved lives. Shortly after their surrender, Henry V tells Exeter to show the town mercy. Yet the threat of violence surely cannot be counted as a 'non-violent' measure. The threat is only credible insofar as people believe that non-violent measure to be the promise of actual violence to come.

I feel this touches on a point that ought to be clarified. Bjola alludes to this, discussing cyber operations, arguing that 'what counts as harm in the case of disinformation is a matter of debate, as the full impact of digital propaganda can sometimes only be accurately assessed with hindsight.'[24] What is debatable is the extent to which a 'non-violent' measure is really all that 'non-violent' Information operations, as a form of non-violent activity, can have very serious, very violent, second and third order effects. Even cyber-attacks, such as the distributed denial of service (DDoS) attacks during the 2010 Burmese elections can leave human populations vulnerable and indirectly cause harm or death to large numbers of people. Similarly, the GridExII cyber-attack simulations, held in November 2013 war-gamed outcomes that would have left several million US citizens without access to power or communications.[25]

24 Bjola (n 17) 5.
25 Taddeo (n 20) 214.

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What is even more debatable is whether a threat, not carried out, can really be said to be a 'non-violent' measure. A deterrent is only credible if the intended audience genuinely believe it will be carried out, and thus genuinely believe the non-violent activity of threatening to sack a city (for example), to be a very real warning for potential violent activity of actually sacking the city. Michael Walzer also touches on this in his discussion of nuclear weapons in *Just and Unjust War*.[26] To me, this seems like the difference between non-violence and implied violence. Just war theory (JWT) I believe can cover both. I am more concerned with the extent we are willing to manipulate information, indeed lie or coerce if it could realistically avoid bloodshed.

To illustrate this, we might turn to another modern siege that used non-lethal measures. For several years leading up to 2014, Russia prepared the 'information environment' around the Ukraine, before a ground force was able to occupy the Crimea with relatively little actual violence. A lot has been published on Russia's use of 'disinformation', however there is a very distinctive difference in Russia's use of information activity, neither implying, threatening, nor publicising violence. Information was used to shape perceptions, to render violence unrequired.

The means of such non-violent measures are widely available, though Russia was perhaps just 'the first to grasp war's new weapons.'[27] NATO and the West are beginning to take notice. Quoting Joseph Nye (who originally coined the term 'soft power'), Williams comments that in modern conflict, it is no longer whose army wins, but 'whose story wins.'[28] 'Simply put', Bjola summarises, 'whether by fomenting political discontent, influencing electoral results, or weakening state authority, digital propaganda has now reached a point at which its long-run impact on state functioning can arguably be as great as a conventional military attack.'[29]

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26 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Basic Books 2015).

27 Zachery Tyson Brown, 'Myth versus Reality: Losing the Plot in the Information War' (*The Strategy Bridge,* 2 December 2019) https://thestrategybridge.org/the-bridge/2019/12/2/myth-versus-lethality-losing-the-plot-in-the-information-war.

28 John Williams, *Weaponised Honesty: Communication Strategy and NATO Values* (2017) 2 *Defence Strategic Communications: The Official Journal of the NATO Strategic Communications Centre of Excellence* https://www.stratcomcoe.org/john-williams-weaponised-honesty-communication-strategy-and-nato-values.

29 Bjola (n 17) 4–5.

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4 Last Resort and Moral Appetites

> One always wants to see diplomacy tried before the resort to war, so that we are sure that war is the last resort.
>
> MICHAEL WALZER[30]

A fundamental (though not unanimously supported) principle of the ethics of war is that of 'last resort.'[31] Put simply, 'if the just causes can be achieved by less violent means, such as diplomacy, fighting is wrong.'[32] Taking this position at face value, and accepting that non-lethal measures can indeed be used to manipulate perceptions and avoid conflict, it would seem that this would be an intuitively appealing avenue for theorists and policy-makers to explore.

As Taddeo comments,

> The principle of 'war as last resort' prescribes that a state may resort to war only if it has exhausted all plausible, peaceful alternatives to resolve the conflict in question, in particular diplomatic negotiations. This principle rests on the assumption that war is a violent and sanguinary phenomenon and as such it has to be avoided until it remains the only reasonable way for a state to defend itself.[33]

There are many who would argue, perhaps naturally, that non-lethal, information-based means must be exhausted before any recourse to lethal force.[34]

Yet the way we behave does not reflect this. The National Defence Strategy[35] somewhat neglects non-lethal operations, and the ethical issues that are developing out of it. The current NATO doctrine on information activity stresses

30 Walzer (n 26) 23.

31 Eamon Aloyo, 'Just War Theory and the Last of Last Resort' (2015) The Hague Institute for Global Justice; Working Paper https://www.thehagueinstituteforglobaljustice.org/wp-content/uploads/2015/10/Working-Paper-1-Last-Resort_1404750337.pdf.

32 Thomas Hurka, 'Proportionality in the Morality of War' (2005) 33, 1 *Philosophy & Public Affairs* 35.

33 Taddeo (n 20) 217.

34 David Perry, 'Repugnant Philosophy: Ethics, Espionage, and Covert Action' in Jan Goldman (ed) *Ethics of Spying: A Reader for the Intelligence Professional* (Scarecrow Press 2005); Sissela Bok, *Lying: Moral Choice in Public and Privat Life* (Vintage Paperbook Edition, Pantheon Books 1999); John Arquilla; David Ronfeld (ed) *In Athena's Camp* (RAND 1997); John Arquilla, 'Twenty Years of Cyberwar' (2013) 12, 1 *Journal of Military Ethics* 80–87.

35 *National Defense Strategy of The United States of America*, 2018 https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf.

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honesty and truthfulness, and avoids any of the more difficult issues surrounding non-lethal measures that are only acceptable when compared to lethal activity.

In response to Russian use of disinformation and propaganda, the NATO Strategic Communications Centre of Excellence (StratCom COE) discusses 'weaponised honesty' as its approach to engaging in the media with regards to conflict. Williams also takes care to make distinctions between strategic communications, information operations, and psychological operations, stating

> Strategic communications is not propaganda, nor psychological operations, nor information ops, nor spin, all of which involve an intention to mislead in some way. Strategic communications is about strategic impact through credible narrative. In complex situations, where reasonable people can hold different views or see the problem from different angles, strategic communication is an honest attempt, always honest, to frame the way people around the world understand what is at stake.[36]

Though recognising his intentions, these distinctions are unrealistically difficult to maintain in practice. The lines between what counts as 'spin' and 'dishonesty' are far less clear that he implies. The NATO community insists in countless other publications that nowhere, including what is commonly referred to as 'information operations' or 'psychological operations' does any NATO power seek to mislead or exercise dishonesty. I cannot help but feel that omitting certain details, and highlighting others comes remarkably close to deceit. Doubtless too that in the realm of international relations allowing an adversary or competitor to infer something for themselves that is not necessarily the case, having placed out individual items of honest, truthful evidence that naturally brings them to an incorrect conclusion when analysed collectively, is surely deceit by other means, yet still short of 'misleading' anyone.

> Without splitting hairs, the main point I would like to make regarding Williams and others on our response to such non-lethal measures, is that 'weaponizing honesty' is a troubling and ethically incomplete position for anyone to hold.

The ethical argument against these measures recalls traditional Kantian points on international conduct. Kant argued that 'means of defence that are not

36 Williams (n 28) 205.

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permitted include: using its own subjects as spies; using them or even foreigners as assassins or poisoners (among whom so-called snipers, who lie in wait to ambush individuals, might well be classed); or using them merely for spreading false reports – in a word, using such underhanded means as would destroy the trust requisite to establish last peace in the future.'[37]

More recent writers apply this idea more specifically to information operations. Taddeo comments, 'even soft cases of IW have a disruptive purpose' This would indeed preserve the principle of last resort, as an acknowledgment that violence now could only be avoided by delaying greater violence until later. Moreover, arguably the use of coercion and manipulation in conflict might exacerbate or disrupt much more powerful forces of peace and stability, that ultimately creates more disorder than the immediate use of lethal force. Non-lethal forces can therefore engender disruption to peace.[38]

'The potential bloodless and non-destructive nature of information warfare' Taddeo continues,

> makes it desirable from both an ethical and a political perspective, since at first glance, it seems to avoid bloodshed and it liberates political authority from the burden of justifying military actions to the public. However, the disruptive outcomes of IW can inflict serious damage to contemporary information societies and at the same time, it may potentially lead to highly violent and destructive consequences, dangerous for both military forces and civil society.[39]

The implication here is that if it *did* work, and was genuinely non-lethal, then we would use it. If the gap between media and conflict has closed, there has now emerged a corresponding 'policy gap' surrounding information warfare.[40]

The fact that lying and coercion does not work surely cannot be the only thing that is wrong with it. I recognise and agree with Williams' point. Nevertheless, it is crucial that some justification for coercion is provided over and above its efficacy. To claim that the only reason not to deceive is that it does not work, is to imply that we would change our mind if it began to work.

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37 Immanuel Kant, 'The Metaphysics of Morals' in Mary J. Gregor (ed) *Practical Philosophy* (CUP 2012) 347–485.

38 See: Beatrice Heuser, 'Defeat as Moral Victory' in Andrew Hom, Cian O'Driscoll, Kurt Mills (ed) *Moral Victories* (Online, Oxford Scholarship 2017); see also: the example of Kyoto in Joe Chapa, 'The Coming of the Storm' (*The Strategy Bridge,* 16 October 2018).

39 Taddeo (n 20) 216.

40 *Ibid.* 218.

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This may very well become the case over the course of the coming decades. The rebuttal seems to make something of a mockery of the whole business of moral reasoning in conflict.

Similar ideas of 'moral authority', as made by Bjola are also fairly unsatisfying. Moral authority, so defined, is the trust and confidence that other actors have in you. Yet beneath the surface, this is still, in the same way bound up with the perceptions of others. It is these perceptions that are the target of information operations attacks to begin with. Bjola's point here is how moral people *think* you are, rather than how moral you *actually* are. Though it may sound cynical, any idea of 'moral authority' that only counts insofar as other people acknowledge it, cannot hold water as an ethical justification.

The importance of answering this question is a reflection of the sorts of wars the West has been fighting, where ethics and strategic issues have merged. Being ethical (or being seen to be ethical) was as strategically important as physical gains on the battlefield. Many strikes that might have been comfortably within ethical boundaries, are often aborted for strategic reasons. Since 2001 the ethical burden has been carried by strategic considerations, however, as Joseph Chapa puts it, 'there is a real possibility the relevant ethical muscles have atrophied as a result.'[41]

Chapa's point is that as the gap between armed conflict and politics has closed, arguably just war thinking has been made practically redundant. In a counter-insurgency operation, the strategy just *is* essentially to behave ethically, or to be seen to be behaving ethically. War and communication have become similar, as war was intended as a *form* of communication. Moral authority was therefore crucial for credibility. A fairly bleak illustration of the point Joseph Chapa brings up can be seen in Russia's interventions in Chechnya. Here, many of the ethical scruples that defined NATO campaigns over the last two decades were flouted, without the level of international judgment and pressure.[42]

Writers have discussed and rejected the principle of last resort independently of the challenge from non-lethal measures. There are still enough left to question why it is that we do not prefer these forms of non-lethal activity to traditional conflict. The high probability of getting caught is not an answer. I am not making an argument to use the forms of information operations that actors such as Russia have proven so effective. I am instead suggesting that it is time to articulate clearly *why* we believe it to be wrong, as a way of insulating ourselves from moral injury as such measures become ubiquitous.

41 Joe Chapa, 'The Coming of the Storm' (*The Strategy Bridge,* 16 October 2018).

42 Olga Oliker, *Russia's Chechen Wars 1994–2000* (RAND 2001) https://www.rand.org/pubs/monograph_reports/MR1289.html.

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5 Context-Dependent

> In more than one way, context matters in ethics. Uncontroversially, the ethical status of an action might depend on context: though it is typically wrong not to keep a promise, some contexts make it permissible.
>
> GUNNAR BJORNSSON[43]

The problem, so to speak, rests on certain long-standing assumptions about what activity in war involves. One of the most fundamental is that JWT tends to focus on damage caused in the physical domain. As information warfare often involves 'abstract entities' Taddeo summarises, 'the application of JWT becomes less direct and intuitive.'[44] Taddeo therefore concludes that there must be an 'ontological hiatus' of the entities involved in traditional warfare versus information warfare. Because JWT rests on an 'anthropocentric ontology', this affects any ethical analysis.

If war and politics have indeed merged, then the scope of what-is-worse comparison has widened. Politics and the media might now be considered a measure of conflict, and thus there is a potential case to be made for *expanding* the restrictions or controls on what is deemed ethically appropriate in the media. There has been a longstanding discussion over what ethical restrictions might be appropriate in the use of intelligence. If measures previously deemed part of politics, such as the media, are now genuinely being considered part of the sphere of conflict, it seems entirely reasonable to suggest that ethical restrictions on intelligence ought to be extended to the media. Perry and other commentators have questioned whether or not spies are still needed in today's saturated communications environment.[45] Yet the fundamental ethical issues that pertain to espionage have not entirely disappeared. Arguably they now apply also to communications technology.

However, a case might be made in the opposite direction: the *easing* of restrictions in non-lethal measures, such as the media is also justified. If the use of communications technology and the media in conflict is such that it *can* now viably be used to avoid bloodshed, surely it *should* be. It is far easier to justify restrictions on a medium if that medium is incapable of helping you avoid bloodshed. When it becomes a viable alternative, the pool of comparison has

43 Gunnar Bjornsson, 'Contextualism in Ethics' in Hugh LaFollette (ed) *The International Encyclopaedia of Ethics* (Wiley 2019).

44 Taddeo (n 20) 216.

45 Perry (n 34) 133.

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surely changed. Now that information activity has apparently become a viable substitute for certain features of armed conflict, it has arguably gone from *morally reprehensible* (compared to the ethical use of communications technology), to the *least worst* option available to deal with a potentially violent confrontation.

And yet surely every tyrant who has ever gripped power has justified their coercion as a necessary alternative to something worse. Making information warfare separate from JWT puts us in a situation where, according to the principle of last resort, we must exhaust it first, or else come up with a justification for why resort to force is preferable.

Making information *part of* what is included in the scope of just war theory however is no less problematic. The issue here is the 'transversality' of the modes of combat, which makes it very difficult to define any unequivocal ethical guidelines.

Perhaps theories of ethics in conflict should focus instead on exactly what constitutes 'harm' and then exercise the principle of proportionality. A less anthropocentric focus might avoid the issue of last resort, as information operations, like lethal measures, would be considered an act of war. Taddeo entertains the idea of adjusting JWT to include information operations, and to wage war to avoid the 'entropy' of the information environment.

A similar point of view is put forward in a recent RAND report, coining the term 'Truth Decay' to refer to the general erosion of respect for factual authority. Here there are listed a number of general consequences of the erosion of truth itself through the use of coercion and the manipulation of the media.

Taddeo observes, 'The impasse is dramatic: if the state decides not to launch the cyber-attack it may be forced to engage in a sanguinary war in the future, but if the state authorises the cyber-attack it will breach the principle of war as last resort and commit an unethical action. This example is emblematic of the problems encountered in the attempt to establish ethical guidelines for IW.'[46] Taking measures that have typically laid outside the realm of 'ethics in war', expands out what counts as 'war' to some problematic areas, and seems to rob it of its essential characteristic of pertaining to war. This position too is hugely disruptive to JWT, and arguably involves dissolving many of the important distinctions that separate the study of ethics in war, from ethics generally.

Both Perry[47] and Bok[48] have advocated for non-lethal measures to be employed as a way of avoiding violent forms of conflict that seems to get

46 Taddeo (n 20) 217.
47 Perry (n 34).
48 Bok (n 34).

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around some of these problems. Sissela Bok in particular makes a very nuanced argument for the *Principle of Veracity*.[49] Here she articulates a principle asserting a very strong moral presumption against lying. What, she asks you, would it be like to live in a world in which truth-telling was not common and accepted practice? No one would ever be able to trust one another, and after reflection, it is only in a world where respect for truth, and trust exists, that we can continue to function.

This is a compelling argument. From some angles indistinguishable from Kantian deontology.[50] It combines the intuitive feeling we have of making things worse by exercising dishonesty, but does not resort to the instrumentalism that robs deceit of its disdain. The case of information operations in modern warfare is just one challenge to traditional theories of just war. It is clear that ideas of ethics in conflict must be updated to account for the gap between claims that war should only be a last resort (or at least a satisfying account of why we don't use non-lethal measures when they are available), and the increasingly clear, yet unexplored efficacy of information activity as an alternative to armed conflict. A recharacterisation of just war, along deontological lines would be a good place to start.

6 Other People's Letters

> Gentlemen do not read each other's mail
>
> US Secretary of State HENRY L STIMSON[51]

I will end with a gesture at why I believe the answer to these questions is so important. There was a time in the past when military intelligence was deemed morally suspect.[52] Senior military commanders believed it against the rules of war to intercept messages from the enemy, nor go out to search for opportunities to catch them off-guard. Lives were lost, that perhaps could have been saved, but for the 'extraordinary syndrome' of senior military commanders to

49 Bok (n 34).

50 See Robert Fullinwider, 'Sissela Bok on lying and moral choice in private and public life: an amplification' (*Infed,* 4 April 2013) https://infed.org/mobi/sissela-bok-on-lying-and-moral-choice-in-private-and-public-life-an-amplification/.

51 Speech made in closing the Black Chamber in 1929; See: Hugh Smith, 'Ethics and Intelligence' in Christian Enemark (ed) *Ethics of War in a Time of Terror* (Australian National University, 2006).

52 See: David L. Perry, *Partly Cloudy*: *Ethics in War, Espionage, Covert Action, and Interrogation* (Second Edition, Rowman & Littlefield Publishers 2009) Chapter 7 *Espionage*.

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judge particular uses of information unfair or ungentlemanly.[53] At some future time, we may well look back on the decision to go to war rather than conduct coercion through the information domain as every bit as cruel and unnecessary as the decision wilfully to refuse relevant intelligence. It is perhaps this that Taddeo has in mind when she urges that information warfare, 'engenders radical changes, which concern the very way in which we understand war, not just how it is waged.'[54]

In exploring these issues, and attempting to understand what relationship certain aspects of information-based, non-lethal capabilities have with standing theories of ethics in conflict,[55] my aim is, like Lucas, 'to extrapolate from the known to the unknown, by means of analogy, comparison, and interpretation' At the very least, when confronted with a new ethical challenge, we must explore the intuitive soundness of the results.[56]

The title for this final section is intended as a reminder that ethical mores in conflict have changed. The broader context of this discussion is what drives that change, and indeed whether ethical principles in conflict *ought* to change. It is also an allusion to an earlier era of conflict. General Wavell's *Other Men's Flowers*,[57] an anthology of poetry collected by a senior military officer, seems to speak of an earlier era in military history, and I hope an invitation to speculate what the rules of conflict are changing from, and to.

Ultimately, the issues of non-violent measures as an alternative to conflict call into question what we are willing to make sacrifices for, and what lengths are we willing to go to in making those sacrifices. As armed conflict continues to veer away from the rules established, it is I believe essential to codify the new rules for what we deem to be newly acceptable. The discussion therefore involves weighing up the right to certain liberties against others. The question of non-lethal measures in war is an important one for the ethics of conflict, because it represents a conflict of ethics.

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53 Norman Dixon, *On the Psychology of Military Incompetence* (Kindle Edition, Palgrave 1977).

54 Taddeo, Floridi (n 22) 3.

55 Nick Brunetti-Lihach, 'Information Warfare: Past, Present and Future' (*The Strategy Bridge*, 14 November 2018) https://thestrategybridge.org/the-bridge/2018/11/14/information-warfare-past-present-and-future.

56 George Lucas, 'Jus in silico: military restrictions on the use of Cyber Warfare' in Fritz Allhoff, NG Evans, Adam Henschke (eds) *Routledge handbook of war and ethics* (Routledge 2013) 37.

57 Archibald Wavell, *Other Men's Flowers* (Jonathan Cape 1944).

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CHAPTER 6

Military Necessity, Proportionality, and Discrimination

The Case of Veracruz

Eric Patterson

Summary

The principle of *military necessity* is well-understood in modern militaries and recognized in the war convention. However, traditional just war theorists have *not* listed the concept alongside the *jus in bello* principles of *proportionality* and *distinction.* This study argues that we should return military necessity to just war thinking and applies it to the Mexican-American War's Battle of Veracruz. This chapter delves into the choices of U.S. General Winfield Scott, focusing on how the ethical principles of military necessity, proportionality, and discrimination work together to assist the commander in making decisions.

Keywords

Military necessity – proportionality – discrimination – battle of veracruz – *jus in bello*

1 Military Necessity, Proportionality, and Discrimination[1]

The principle of *military necessity* is well-understood in the manuals of modern militaries and is recognized in the war convention. However, traditional just war theorists have *not* listed the concept alongside the *jus in bello* principles of *proportionality* and *distinction.* This study evaluates the ethics of the pre-aerial form of strategic bombing associated with siege warfare in the case of the Mexican-American War's Battle of Veracruz.

1 I would like to thank my research assistant, Bryan Ballas, for important work on the background of the Mexican-American War. Hector Beltran assisted with helpful revisions of the final draft of this chapter.

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U.S. General Winfield Scott knew that the tropical climate of Veracruz was extremely dangerous for his troops due to the dreaded 'yellow jack' that had decimated previous armies in the Caribbean and Gulf Coast. But the port city of Veracruz was considered the most heavily fortified city in the entire Western Hemisphere, able to withstand major pirate assaults. This study looks specifically at the choices that General Scott had. He could lay siege to the city, throw his forces at it head on in a suicidal assault, or blast it with artillery from a distance.

This study will delve deeper into Scott's choices with a specific focus on how the ethical principles of military necessity, proportionality, and discrimination work together to assist the commander in making decisions. I will argue that General Scott's decision to bombard a city full of civilians, in this instance, was the ethical choice and that there are implications for siege warfare and later aerial coercion campaigns.[2]

A larger project that this is tied to—one important for the intersection of the law of armed conflict with changes in international humanitarian law—is the restoration of the principle of military necessity as a guiding and restraining principle for *jus in bello* analysis. This may seem like a minor quibble since every soldier is taught about military necessity and every legal textbook mentions it. But military necessity is almost entirely neglected by the most prominent just war philosophers, ethicists, and social scientists of our time: Walzer, Johnson, Patterson, Rodin, McMahan, LiVecche, Biggar, and many others. One can see this vividly in the fact that the journal of record in this domain, *Journal of Military Ethics,* has gone for the past decade with virtually no substantive articles on the principle of military necessity. As one scholar has recently written, a problem with all of this conceptual confusion is that 'current legal and doctrinal statements rooted in necessity can give rise to conflicting prescriptions' or action in the field.[3]

Hence, this project has a wider application for theorists of military ethics as well as diplomats, warriors, and humanitarians: how should just war analysis handle military necessity? Is it a vital moral principle or a sop to bloody militarists? I will argue that military necessity must be seen as a vital moral principle because it is a principle of stewardship for leaders, most notably the

2 Elsewhere I have considered the issues of presidential and commander's intentions and *jus in bello* violations in See Eric Patterson, 'The Texas Rangers, Yellow Jack, and Veracruz: Proportionality and Discrimination in the Mexican-American War,' in *Just American Wars: Ethical Dilemmas in U.S. Military History* (New York: Routledge, 2019).

3 Nathan Wood, 'Necessity in Law and Military Doctrine: Conflicts and Potential Solutions,' unpublished manuscript (December 2020).

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husbanding of their most vital battlefield resource: their own soldiers (troop protection). Individual soldiers, especially at the battle of Veracruz, are often part-time volunteers from the state militias. They are tax-payers, breadwinners, and everyday citizens; military necessity protects them, not just the citizens of the enemy. Military necessity may also call for more powerful force to be used in the short-term, with an eye toward limiting deeper, long-term damage over time. Veracruz demonstrates the intersection of military necessity, proportionality, and distinction. It provides a real-world case study of the importance of commanders carefully evaluating these principles in order to care for their troops and make wise choices about employing force.

2 *Jus in Bello* in the Mexican-American War

After Mexican forces attacked across the U.S. border in 1846, what appeared to be an inevitable clash between Mexico and the U.S. lasted for two years, with battles ranging from the Gulf of Mexico to the Pacific Ocean. Although many of the underlying political issues of the time seem remote, such as Mexico's constantly failing democracy and the perennial question of whether U.S. slavery would advance west, nonetheless the war was of tremendous importance to the future of both countries. From the U.S. perspective, it was the training ground for the leaders of the future U.S. Civil War including Robert E. Lee, Ulysses S. Grant, and George McClellan, who learned a great deal at Tampico, Veracruz, and Chapultepec.

Although there was at the time, and remains today, debate about whether or not it was just for the U.S. to go to war[4] (*jus ad bellum*), the focus of this chapter is on how the U.S. military fought the war (*jus in bello*): using means

4 One thing that is poorly defined in the literature on whether there was a just *cassus belli* for the U.S. or for Mexico (or both) has to do with the politico-security arrangement of the area. Scholars should reconsider whether the area of Texas was, for all intents and purposes, an anarchic frontier or a 'stateless space' that needed political organization and functioning security arrangements. Such stateless spaces, including the high seas, the deserts of Yemen, some jungles of East Asia and the Pacific, the tribal areas of Pakistan, and parts of the Great Lakes regions of Africa, are clearly outside state control and have been the subject of ethics-of-war debate for the past decade, when they provide the staging ground for terrorism like that of Abu Sayyaf, Joseph Kony's Lord's Resistance Army, and al Qaeda. Certainly, the anemic Mexican state was not providing much security prior to Texan Independence; a study that begins with the security parameters of people living in Texas at the time might make for an interesting new approach to considering the ethics of going to war in the first place, at least on the part of Washington, DC.

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and tactics proportionate (*proportionality*) to battlefield objectives and which limit harm to civilians, other non-combatants, and property (*discrimination*). Robert E. Lee remembered that the troops 'fought well and fought fairly in a manner no man might be ashamed of.'[5] Ulysses S. Grant, is well-known to have labelled the U.S. decision to go to war as 'wicked,' however, his comments on the conduct of U.S. troops are proud, 'The troops behaved well in Mexico, and the government acted handsomely about the peace … Once in Mexico … the people, those who had property, were our friends.'[6]

Lee and Grant argued that the U.S. fought the war in a moral manner. Elsewhere, I have argued that when it comes to issues of proportionality and discrimination, we should look at two features of this war. The first was the commander's intent, and we find that the leaders commanding in the field, such as Generals Zachary Taylor and Winfield Scott, emphasized military discipline and proclaimed the protection of civilians and private property. The second has to do with the role of military training on troop behaviour, and the historical record appears that military 'regulars' (professional soldiers) were far better behaved than some members of the 'volunteers' (short-term militia members).[7] This chapter's evaluation goes beyond the previous study to use the case study of Veracruz to reinvigorate a debate about the fundamental role of military necessity as a moral criterion.

On 24 April 1846 Mexican General Arista, acting on the express orders of Mexico City, sent 1600 men to attack the U.S. Army under General Zachary Taylor on U.S. soil, initiating the Mexican-American War.[8] Among the causes of the war was a sense of unfinished business since Texas had achieved its independence from Mexico a decade before, grievances on both sides regarding borders, bandits, Indians, the potential wealth of border territories, and the U.S. sense of Manifest Destiny that these thinly populated, almost ungoverned Western spaces would fall into its orbit.[9]

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5 Fitzhugh Lee, *General Lee*, (D. Appleton and Co 1894) 43.

6 John Russell Young, *Around the World with General Grant: A Narrative of the Visit of General U. S. Grant, Ex-President of the United States, to Various Countries in Europe, Asia, and Africa in 1877, 1878, 1879; To Which are Added Certain Conversations with General Grant on Questions Connected with American Politics and History; With 800 illusory. Vol. 2*, (The American News Co. 1800) 447–448.

7 See Patterson (n 2).

8 *Ibid.* 148–150.

9 Harvard University scholar Brian DeLay reports that northern Mexico was almost ungovernable, 'a land of a thousand deserts:' 'In the early 1830s … the Comanches, Kiowas, Apaches, Navajos, and others abandoned imperfect but workable peace agreements [with Mexico] … killing and capturing people they found and stealing or destroying the Mexican's animals and property … Mexicans responded by doing the same … through the 1830s and 1840s until much of the northern third of Mexico had been transformed into a

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Within a month of the Mexican attack at Ft. Texas, General Zachary Taylor had bested Mexican General Arista at Palo Alto, Resaca de la Palma, and Matamoros; in the meantime, President Polk requested that Congress declare war, which it did on 13 May 1846.[10] Following the takeover of Matamoros, General Taylor issued a proclamation outlining benevolent intentions to the Mexicans.[11] He specified that America had no quarrel with the Mexican people, but only with their tyrannical leaders.[12] Taylor promised that churches would remain intact and untouched. He requested only food for the American army and promised monetary compensation. He also asserted his desire to disprove depictions of Americans as ruthless, asking for the chance for the Americans to prove themselves as civilized people.[13]

Overall U.S. strategy in the war [see map here]:[14] was to quickly beat Mexico's armies in the field, on the assumption that the level of political instability and intrigue in Mexico City would result in a quick capitulation. This was originally to happen in two general theatres, one in the northeast along the Mexico-Texas border and eastern part of Mexico with a second front in Alta California (today's state of California), to which small groups had marched overland (under John C. Fremont and Stephen Kearney) and a small naval force, under Commodore Stockton, had arrived by sea.

But, Mexico City, despite its vacillations and intrigue among various factions, did not quickly sue for peace. Consequently, President Polk, in secret correspondence with Mexico's former dictator, General Antonio López de Santa Anna, who was then in exile in Cuba, allowed Santa Anna to return to Mexico on the promise that Santa Anna would quickly end hostilities. In classic Santa Anna fashion, he reneged on that promise to Polk and took the field, suffering major losses at the Battle of Buena Vista and elsewhere. By

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vast theatre of hatred, terror, and staggering loss for independent Indians and Mexicans alike. By the eve of the U.S. invasion these varied conflicts spanned all or parts of ten states.' See Brian Delay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (Yale University Press, 2008), xv.

10 *Ibid.*

11 John Frost, *Life of Major General Zachary Taylor; With Notices of the War in New Mexico, California and in Southern Mexico*. (D Appleton & co 1847) 104–106.

12 *Ibid.*

13 *Ibid.*

14 https://upload.wikimedia.org/wikipedia/commons/thumb/0/0b/Mexican%E2%80%93American_War_%28without_Scott%27s_Campaign%29-en.svg/1024px-Mexican%E2%80%93American_War_%28without_Scott%27s_Campaign%29-en.svg.png. Attribution: By Kaidor—This vector image includes elements that have been taken or adapted from this: Mexican–American War (by Kaidor)., CC BY-SA 3.0, https://commons.wikimedia.org/w/index.php?curid=20357140.

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the autumn of 1846, it was clear to U.S. leaders that a speedy, conclusive blow was not occurring as defeated Mexican armies drew further and further back into the interior, and that a long, overland march across Mexico's deserts and mountains could decimate U.S. forces in numerous ways, not only at the hands of Indian attacks and the elements, but as three-month enlistments expired and as some Northern public opinion became more strident in its opposition to the war.[15] Consequently, as some armies trekked southward and westward, over 1,000 miles deeper and deeper into Mexico, a new force, under General Winfield Scott, made an amphibious landing at Veracruz, bombarded the city into submission, and then marched the short 250 miles toward Mexico City. Before we look at that audacious landing and the investment of Veracruz, it is time to consider the principle of battlefield military necessity.

3 Returning Military Necessity to the *Jus in Bello*

U.S. and other Western militaries emphasize the limits imposed by the law of armed conflict (LOAC). In the U.S., our personnel go through a LOAC refresher training annually on the *jus in bello* (ethics of how war is fought) principles, starting with military necessity; and then proportionality; and then non-combatant immunity, or distinction; and then principles of humanity and unnecessary suffering. When foreign militaries, particularly in developing countries, receive training from the United States, other Western militaries, or the excellent curriculum from the International Committee of the Red Cross, they receive a similar experience, which emphasizes military necessity alongside proportionality, non-combatant immunity, unnecessary suffering (the principle of humanity), prohibited arms, and the like.

In contrast, the vast majority of books written on just war thinking in the past half century do not talk about military necessity in any detail. Among just war scholars, not one of our major lists of just war criteria features military necessity as a *jus in bello* principle.[16] This is in stark contrast to legal textbooks at every major law school which emphasize military necessity.[17] In short, our

15 The primary voices of opposition usually argued that this was a war of conquest, led by Southerners, with the express intent of expanding slavery.

16 This survey includes my own work, which provides the standard narrow list of *jus in bello* criteria: discrimination and proportionality. The one important outlier was pointed out to me by James Turner Johnson, who referred me to William V. O'Brien's exceptional *The Conduct of Just and Limited War* (Praeger 1981).

17 Textbook examples include Gary Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press, 2010); Geoffrey S. Corn, *et al. The*

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lawyers and soldiers emphasize military necessity but our just war scholars largely neglect it. Indeed, a search of journals such as *Journal of Military Ethics* and *Ethics and International Affairs* shows little original scholarship on military necessity in the past two decades.[18]

I am proposing, therefore, reintroducing military necessity as a *jus in bello* principle. So, the essential *jus in bello* criteria would be *military necessity*, *proportionality*, and *discrimination*.

3.1 *What Is Military Necessity?*

The Lieber Code, issued under President Lincoln as General Order 100, defined military necessity in Article 14 as the 'measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.'[19] Later articles narrow military necessity to ensure that wanton violence, destruction, and perfidy are not labelled as 'military necessity.'[20] A key presupposition here is that we are talking about military necessity as tactical and operational activities on the battlefield.

The *U.S. Department of Defense Law of War Manual* says that military necessity may be defined as 'the principle that justifies the use of all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of war.'[21] Gary D. Solis in his legal textbook, *The Law of Armed Conflict*, writes, 'military necessity is an attempt to realize the purpose of armed conflict, gaining military advantage while minimizing human suffering and physical destruction.'[22] William V. O'Brien, in his classic text, writes,

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Law of Armed Conflict: An Operational Approach (Aspen Casebook, Aspen Publishers, 2012); Separately, there is a large set of more specialized books by legal scholars on these topics, including Yishai Beer, Military Professionalism and Humanitarian Law (OUP 2018) which begins with a chapter titled 'Revitalizing Military Necessity,' and Jens David Ohlin and Larry May's 'Necessity in International Law' (OUP 2016).

18 A notable exception is the thought-provoking article from a 2005 edition of *Journal of Military Ethics.* See Asa Kasher and Amos Yadlin's 'Military Ethics of Fighting Terror: An Israeli Perspective' (2005) 4, 1 and helpful responses, including those by David Perry and Nick Fotion.

19 Richard Shelly Hartigan, *Lieber's Code and the Law of War* (Precedent Press 1983).

20 Lieber's code has three articles dealing with military necessity (Articles 14–16).

21 U.S. Department of Defense Law of War Manual, 2016, 52 https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%2015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190.

22 Gary Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press, 2010).

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> Legitimate military necessity consists in all measures immediately indispensable and proportionate to a legitimate military end, provided that they are not prohibited by the laws of war or the natural law, when taken on the decision of a responsible commander, subject to review.[23]

Military necessity is distinct and different from the other *jus in bello* criteria. The key presupposition of military necessity is actually one of localized authority: per O'Brien it is 'a responsible commander' who makes decisions on the ground, in the heat of combat 'taken on the decision …'. The information may be imperfect due to the fog of war, but a commander must make decisions and issue orders. It is the commander, along with his subordinates, operating under the imperatives of higher political authority and assessing battlefield realities, who make decisions about tools and tactics (proportionality) and limits (distinction). In other words, military necessity is in relationship with the other two *jus in bello* criteria:

– *proportionality:* the battlefield tools and tactics employed must be proportionate to battlefield objectives, and
– *discrimination:* actions must reasonably protect the lives and property of legitimate non-combatants.

Unfortunately, military necessity is often derided, poorly defined, or inappropriately used by those claiming to take a just war perspective. Boston University scholar Neta Crawford, suggests that military necessity is merely immoral consequentialism that allows military personnel to violate civilian protections.[24] Even Daniel Bell, in an otherwise excellent volume on just war thinking as Christian discipleship, calls military necessity 'a trump card that overrides non-combatant immunity.'[25]

A problem that sometimes surfaces in the just war literature is a lack of distinction between military necessity as a tactical *jus in bello* concept and strategic necessity. To be clear, the argument that I am making—and one that is in accord with the legal literature on military necessity—is that the concept of military necessity is a tactical and operational ('battlefield') concept. It is

23 William V. O'Brien, *The Conduct of Just and Limited War* (Praeger, 1981) 9.

24 Neta C. Crawford, 'Bugsplat: US Standing Rules of Engagement, International Humanitarian Law, Military Necessity, and Noncombatant Immunity' in Anthony F. Lang Jr., Cian O'Driscoll, and John Williams, eds., *Just War: Authority, Tradition, and Practice* (Georgetown University Press, 2013).

25 Dan Bell, *Just War as Christian Discipleship: Recentering the Tradition in the Church rather than the State.* (Brazos Press, 2009) 22.

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a *jus in bello* principle appropriate for describing the tactical and operational decisions made at a given time and place in a localized conflict on air, land, or sea. In a helpful book, Michael Gross connects the principle of military necessity to military effectiveness and proportionality to illustrate a two-step distillation process for decision-making (i.e., battlefield necessity). First, commanders must rapidly decide what is militarily necessary and then, second, commanders should, clear-eyed, look through the lens of humanitarian principles at such actions. Gross goes on to suggest an evaluative or feedback loop for introducing new weapons and tactics: considering military necessity in their use balanced by the limits of humanitarianism, and then re-evaluating the effectiveness of necessity and the limitations as weapons and tactics are deployed: Did it work as expected? Do we need new regulations or changes as we go forward? Clearly Gross' approach is intelligent and ethical, but in my view reflective approach is the purview of higher-ranking military and civilian leaders, not lieutenants and soldiers under fire.[26]

In contrast, there are scholars who take the term 'necessity' and use it in a strategic sense. When they do so, they typically are talking about the decisions that political authorities make to preserve the very existence of a body politic. A case in point is Michael Walzer's discussion of military necessity in supreme emergency, the potential destruction of a political community. Against the backdrop of Israel's wars for survival in 1948, 1956, and 1967 Walzer writes, 'The world of necessity is generated by a conflict between collective survival and human rights.'[27] Political leaders in dark times, such as Winston Churchill facing the Nazis during Dunkirk and the Battle of Britain, have used the language of strategic necessity. In his famous 4 June 1940 speech to Parliament and the nation, he argued,

> We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender …[28]

Whether a leader facing disaster, like Churchill, or a scholar writing about supreme emergency, like Walzer, the focus on national survival when facing disaster (strategic necessity as *jus ad bellum*) is different from the issues of

26 Michael Gross, *Soft War: The Ethics of Unarmed Conflict* (Cambridge University Press 2017); Eric Patterson, *Just War Thinking* (Lexington Books, 2007).

27 Michael Walzer, *Just and Unjust Wars*, third ed. (Basic Books 2010) 251–252.

28 Josiah Wedgwood, letter of 4 June 1940, quoted in Martin *Gilbert, Finest Hour Winston S Churchill 1939–1941* (*London: Book Club Associates, 1983*) 468.

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day-to-day battlefield fighting (military necessity as *jus in bello*) that the rest of this essay will address.[29]

3.2 *Military Necessity as Stewardship*

Military necessity is concerned with the practical aspects of battlefield scenarios that must be considered in light of the imperatives of troop protection and victory.[30] Military necessity is not raw consequentialism. Military necessity is stewardship. Military necessity should be particularly important to democracies because it protects the lives of citizens in uniform.

I hope to provoke a response from like-minded just war scholars to formally return military necessity to the *jus in bello* criteria. More specifically, military necessity is a stewardship principle for reasons of troop protection, a focus on victory, and military effectiveness.

Where should we locate military necessity? Does it come first, second, or third on the *jus in bello* list? Some scholars, such as Nigel Biggar, have suggested that if we reintroduce military necessity, we should consider it a part of the principle of proportionality. Neta Crawford agrees, saying that proportionality implies an evaluation of military necessity. Others suggest that military necessity, if a part of the *jus in bello* criteria, is always in tension with, or restrained by overriding principles of proportionality and discrimination. Hence, they would suggest that the ordering of the *jus in bello* criteria should be proportionality first, then discrimination, and then military necessity. I think that it is important to put military necessity first in recognizing that it is in a working relationship with proportionality and discrimination. I think it best not to see the *jus in bello* criteria as a mere checklist, but rather see all three principles in overlapping relationship with one another.

3.3 *The Multidimensionality of Military Necessity*

Military necessity is a stewardship: careful management of that which has been entrusted. What is a greater trust than human life and property? Military necessity does include cost-benefit analysis, but this is not craven consequentialism. Both from a Christian perspective, and from a moral philosophy perspective, stewardship is extremely important. There are many biblical passages about kings and princes counting the cost before acting; and such is true in the battlefield principle of military necessity.

29 Gross (n 26).

30 Patterson (n 26).

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There are at least four elements of military necessity that are important for stewardship. The first is *troop protection*. Military commanders should be deeply concerned with protecting the lives and welfare of their own troops and this should influence the way they make decisions about battlefield activity. Moreover, military personnel are citizens who, when at home, are husbands and wives, sisters and brothers, children and parents. Soldiers are citizens, whether conscripted or voluntary, and we should safeguard their lives in accordance with the other *jus in bello* principles of proportionality and discrimination.

The second element is the principle of *economy of force*. Traditional military strategy has a set of principles such as not dividing one's forces, focusing one's forces in a certain area, and only using as much force as needed in a given domain. These are prudential considerations that have to do with husbanding one's resources. Such resources are not finite and are funded by the tax dollars of average citizens. These resources include more than military materiel, most importantly the lives of men and women in uniform. Moreover, when force is used in a deliberate but economical way, this means far less destruction of the enemy, far less rebuilding, and far less collateral damage.

Third, military necessity is also about *effectiveness*. Effectiveness means how well we get the job done. Historians are rightly concerned about how ineffective certain battlefield plans were in the First World War, such as at the Somme. In contrast, we laud the effectiveness of the battleplan in the 1991 Gulf War. Effectiveness is an important part of military necessity: Will this plan work? Will our actions be effective? Effective actions are far less wasteful and destructive, and this is a feature of moral accountability.

Fourth, military necessity is a link between battlefield activities and stated war aims (*jus ad bellum*) as well as a link between what happens now and the long-term accomplishment of war aims in *jus post bellum*. In other words, military necessity always has an eye on *victory:* victory in this engagement, victory in this campaign, and, ultimately, how this battlefield engagement advances long-term strategic victory. Too often, arm-chair theorists want to use *jus in bello* to limit the activities and armaments of troops at the site of a specific tactical encounter. Military necessity reminds us that each battlefield is linked to larger campaigns in the grand strategy of the conflict.[31]

31 James Dubik makes a not dissimilar argument in the introduction to his *Just War Reconsidered* (University of Kentucky Press 2016). He argues that we need to focus more attention on the 'gap' between the *jus in bello* direction that senior leaders must provide and the *jus in bello* activities going on at the tactical level; the former needs more attention.

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In short, military necessity is a critical stewardship principle that includes principles of *troop protection, economy of force, military effectiveness,* and an *aim toward victory* that is important in providing a richer *jus in bello* that accompanies the principles of proportionality and discrimination. It is a moral criterion long recognized in the law of armed conflict, but that has fallen out of favour in recent years with just war scholars in the social sciences and humanities. The case of Veracruz demonstrates the importance of military necessity as a prudential ethical principle that is informed by, and interconnected with, proportionality and discrimination.

4 *Jus in Bello* and the Bombardment of Veracruz

Democrat President James K. Polk and his senior military advisor, General Winfield Scott (a Whig), wanted a rapid victory. As this did not happen in the first six months of the war, the decision was made to plan an assault on the Mexican capital. But, U.S. armies already on the ground in the north would have to traverse vast deserts to get there, so Scott advocated for America's first-ever major amphibious landing at the strategic port of Veracruz on the Gulf Coast. This would allow U.S. troops to cut inland across passes in the Sierra Madre and march on Mexico City itself, assuming they could get past the citadel of Veracruz, the harsh environment, and any Mexican armies in the way.

Scott knew that the tropical climate of Veracruz was extremely dangerous for his troops and that the American forces needed to be in the Sierra Madre region by about 15 April in order to not have the dreaded 'yellow jack' (yellow fever) decimate the army.[32] However, to Scott and his fellow commanders' dismay, the U.S. War Department bungled the dispatches, manpower, and supplies for the operation, making it impossible to arrive at Veracruz until the first week of March 1847, two full months after the original rendezvous date.[33] This meant that Scott had to land his troops, engage and defeat the Mexican forces, and then force march inland to get out of the tropical zone with its mosquitos, malaria, dysentery, and yellow fever. Scott had to have in mind the ill-fated French expedition to Haiti forty years earlier, in which an army of 25,000 was decimated by disease. Only 3,000 French made it home alive.[34]

32 David W. Tschanz, 'Yellow Fever and the Strategy of the Mexican-American War' (Accessed July 2021) <http://www.montana.edu/historybug/mexwar.html>.

33 John S. D. Eisenhower, *So Far From God,* (Illustrated edition, University of Oklahoma Press 2020) 371.

34 Tschanz (n 32).

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This was not expected to be an easy task. Veracruz (Vera Cruz)—the True Cross—was considered the most heavily fortified city in the entire Western Hemisphere, able to withstand major pirate assaults. Scott would have about 10,000 troops at his command; the Mexican army had nearly 4,000 in what was considered to be an impregnable city. Moreover, he knew that in a short time the enlistment of many of his volunteers would expire and they would return home (most were on three- to six-month enlistments). Upon arrival, Scott learned that another Mexican army, perhaps under General Santa Anna himself, was on the march toward his position. It took Scott several days to land his troops (on 9 March), invest positions around the city, coordinate artillery with the naval elements, and prepare for the next phase.

What were Scott's choices? He had three. He could lay siege to the city and attempt to wait it out, causing starvation and disease to erode the city's morale and defenses. He could attack it straight on, throwing his armies at its gates and walls and hope that somehow his army could break through. Or he could shell it with artillery, blasting it into submission.

Scott demanded immediate surrender of Veracruz, but Mexican Brigadier General Juan Morales refused to surrender.[35] As late as 22 March Scott urged surrender, but General Morales said no and the cosmopolitan city, which included various foreign consuls, business people, and Mexican elite, expected a protracted siege. Although the details of various skirmishes, the role of a Mexican artillery battery on a nearby island, raiding sorties issuing out of Veracruz, and the engineering efforts of Captain Robert E. Lee and his subordinates (including Lieutenants Joe Johnston and George McClellan), are all of interest, those complexities are beyond the scope of this chapter.[36] Scott made the decision to bombard the city, despite its large civilian population, from that point on because the Mexican authorities would not surrender. Two days later, the foreign leaders in the city sent a request to Scott to allow the women and children to leave, but he refused citing previous opportunities that would have saved civilian lives.[37] This may have been a delaying tactic for reinforcements to arrive and Scott, with his eye on the calendar, was interested in surrender, not delay. Now the blood was on the hands of the Mexican military.

History tells us that within a short time the Mexican General Morales resigned, citing health problems, and his second in command quickly surrendered to the American army. Reports indicate that Mexico lost 1,100 people,

35 John J. Oswandel, et al eds., *Notes of the Mexican War 1846–1848*, (University of Tennessee Press 2010) 44.

36 K. Jack Bauer, *The Mexican War, 1846–1848* (Macmillan 1974).

37 Mark Crawford, et al., *Encyclopedia of the Mexican-American* War (ABC-CLIO 1999), 252.

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including civilians, while Scott's army of 10,000 suffered only 68 dead and wounded.[38] Scott rapidly put in place General Order 20 imposing order, protecting churches and businesses, and establishing heavy penalties for troop misbehaviour. He was successful and even popular by these moves, going as far as attending Mass in order to demonstrate his goodwill to the Catholic population.[39] Scott's benevolence became so renowned that it led some Mexicans to beg for him to become their new ruler.[40] Because elements of his army had marched ahead and beaten a 2,000 member Mexican force that had come to cut them off, he was free to move the bulk of his army toward the healthy foothills of the Sierra Madre, leaving the dreaded tropical diseases behind him. Within ten days the effects of the bombardment were all but eliminated.[41]

4.1 *Veracruz and Military Necessity*

Military necessity works in relationship with the principles of proportionality and discrimination by providing a prudential ethics of stewardship on matters of *troop protection, economy of force, military effectiveness,* and an *aim toward victory.* General Scott had a modest force when one considers the need to win and hold the mighty city of Veracruz, then protect his supply lines while fighting larger Mexican forces across Mexico. As a leader, with responsibility delegated by the president, protecting his troops was a vital and moral concern. This was also true when one considers the environmental risk of disease and the simple fact that many U.S. troops were civilian volunteers on short enlistments. They had been citizens before Mexico attacked the U.S. and Scott had a responsibility to reasonably protect their lives on behalf of their spouses and children.

Scott's approach to forceful intervention at Veracruz also demonstrates using the right type of force in the right measure (artillery bombarding the city), which is the basis for understanding the economy of force with an eye to what would be most effective. When one considers other options, most notably protracted siege, it would be both devastating to all parties, including destitute civilians, and, in the long run, could be ineffective. At the heart of this is the battlefield commander weighing these principles, including those of proportionality and discrimination with the will to win. The principle of *aim toward victory* means that commanders are intent on victory rather than publicity, renown, or public opinion. In some cases, *aim toward victory* will make

38 *Ibid.* 286.
39 Justin H. Smith, *The War With Mexico* (Vol. II, Macmillan Company 1919) 221.
40 Crawford (n 37) 253.
41 Smith (n 39) 221–222.

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commanders less aggressive; in other cases, this principle should make them more aggressive. Unfortunately, today we have seen many cases where military necessity's principles have been neutered by officers worried about negative publicity. Military commanders have a responsibility to the home front and to their own troops to focus attention on the tactical steps necessary for victory.

4.2 *Veracruz and Proportionality*

Proportionality is about stewardship, restraint, and limiting destruction. It is also about thoughtfully attempting to link battlefield options and actions with battlefield objectives. But what is often missed in thin discussions of military ethics, at least by armchair philosophers, is how a specific battle is interwoven with a larger set of trends and campaigns. In other words, there is a mid-range of 'proportionality' that is bigger than tactical battlefield engagements in a specific time and place that connects what happens in that engagement with campaign and theatre objectives. In other contexts, great battles like Antietam and D-Day mattered, but not just as discrete battles: they also were connected to larger campaign and war aims. Thus, when it comes to the overall strategic objective—taking Mexico City and bringing a more rapid ending to the war—the attack on Veracruz is a proportionate activity, and one that interweaves the *aim of victory* with proportionate action at the campaign level. This is an important point when thinking about more recent wars. Perhaps one of the reasons that some battlefields in Iraq and Afghanistan had to be re-fought and won was because senior leadership at the highest level was unwilling to authorize decisive battlefield actions (i.e. due to very limited rules of engagement) that would have linked enduring victory in one location with wider, longer-term victories that could be held and built upon elsewhere. This is likewise a criticism of some of the campaigns of the Vietnam War: it seemed that the issue of proportionality could be so limited, such as under President Johnson, in terms of how many bombs in what place at what time on what target that the entire strategic notion of proportionality in a theatre or strategic sense was entirely missing.

At Veracruz, Winfield Scott understood this. He knew that decisive victory at Veracruz was more than just tactical operations against the city. It had to do with creating a sea-based line of communication (for the short term), creating a path to Mexico City, opening a second major front in the war, and saving the lives of his own troops. This is strategic proportionality. Scott did not seek a scorched earth campaign, but he did seek rapid, decisive victory using all the tools at his disposal. Thoughtful proportionality means recognizing that whatever men and materiel that he lost in the short-term at Veracruz would not be supplied for some time, so the resources that he wisely conserved in the short

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bombardment were going to be available to fight another day. This, of course, was the problem the Confederacy ultimately faced in the U.S. Civil War: pyrrhic victories with no reserve resources to fall back on, in contrast to what appeared to be a never-ending supply of men and armaments from the Union.

Finally, a more conventional view of proportionality, one that simply focuses on the relationship of battlefield tactics in achieving battlefield objectives, also suggests that the course of action chosen by Scott was proportionate. His army did not just overcome a major military obstacle ('military necessity'), but did so in a way that appropriately employed the resources at his disposal in order to secure this critical objective, with an eye on time, manpower, and materiel. It is noteworthy that this *sui generis* action by General Scott demonstrated his resolve to the Mexican military and political class and thereby ultimately saved lives: there were no similar urban bombardments throughout the remainder of the war.

4.3 *Veracruz and Discrimination*

When it comes to the issue of discrimination, there are a few issues worth considering. First, was a rapid, hammer-blow to Veracruz likely to result in more or less destruction than a long-running traditional siege? Second, does the principle of discrimination mean that Scott's only humanitarian objective was to protect civilian life and property in the city, or did he have some responsibility to his own troops (many of whom were volunteers), particularly in the face of yellow jack and other disease? Third, if an opponent's military is using human shields—and one could argue that Veracruz is such an instance—who is actually responsible for the deaths of those civilians?

We do not fully know what Scott was thinking at the time, although his memoirs (written years later) indicate that he believed that a short, dramatic bombardment would force the capitulation of Veracruz and actually limit human suffering. The weapons of the time, from army and navy artillery to Congreve rockets, were a far cry from the discriminating smart missiles of today. However, the English consul both condemned Scott's action as barbaric and yet conceded that the bombardment probably resulted in fewer casualties in the city than a traditional siege would have. Part of the reason for the consul's complaint was that civilians and foreigners were not allowed to leave the city at some point after the bombardment began: the historical record is blurry about at what point Scott said that civilians were no longer going to be allowed to leave the city: Scott demanded surrender, not truce, from the outset.

Interestingly, what has developed in the last twenty years is a scholarly literature looking at a parallel set of questions regarding armed humanitarian intervention. For instance, Mathew Krain's important study in *International*

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Studies Perspectives brings together a wide body of research on armed humanitarian intervention in the case of ethnic cleansing and genocide, arguing that the potency of military force (and underlying political will) of the external attacking force matters in reducing the duration and destructiveness of conflict, particularly with regards to civilian casualties. Krain concludes that in some instances, slow escalation often results in more civilian deaths and greater destruction of institutions and infrastructure due to the measured but relentless downward spiral of devastation and may even escalate it by signalling apathy or consent.[42] This battlefield logic seems to hold true in an instance like the Veracruz operations: both sides probably had lives saved due to the city rapidly falling to bombardment rather than a long-term siege dragging out through the months when starvation and 'el Vomito,' yellow fever, would attack indiscriminately. This was the reluctant view of the British consul, who denigrated the bombardment of Veracruz but conceded that in the long run it saved lives.[43]

Finally, although Mexican authorities may have not been thinking in terms of what we today call 'human shields,' nonetheless Veracruz is an excellent example of a problem faced by moral military commanders. What is a commander to do when one's enemy deliberately uses the principles of humanity and discrimination callously, by employing child soldiers, hiding bombs in the folds of a women's garment, using a house of worship or hospital as a military emplacement, or daring an attack that would result in the deaths of women and children? Veracruz seems to have been a case where locals had confidence that the city's many European inhabitants and a sense of American *noblesse oblige*—rather than the skill of the Mexican military—would protect the city. Western militaries have been facing these problems for the past half-century from Vietnam to Afghanistan to Iraq. In Scott's case, the Mexican general may have tried to outlast Scott by expecting Scott's honour to make it impossible for the Americans to bombard the city.

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42 International Intervention and the Severity of Genocides and Politicides by Matthew Krain, *International Studies Quarterly*, September 2005. Also see Philip Gourevitch, *We wish to inform you that tomorrow we will be killed with our families* (Farrar, Straus, and Giroux 1998); Alison Des Forges, *Leave none to tell the story* (HRW 1999); Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Perennial, 2002), 353; Gerald Caplan, *Rwanda: The Preventable Genocide*, The Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events (Organization of African Unity, 1998); Barbara Walter, 'The Critical Barrier to Civil War Settlement,' (*International Organization* 51.3 (1997): 335–364; Eric Patterson, 'Rewinding Rwanda: What If? (A Counterfactual Approach)' in (2005) 33 *Journal of Political Science*.

43 Smith (n 39) 211–212.

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Such battles are clearly cases of the opponent attempting to manipulate the ethics of the situation by putting moral blame on the adversary. But who is really morally obligated in such a situation? Just as a bank robber who holds civilians as hostages has primary moral responsibility for their safety—not the policemen who have responded to the alarms—so too the Mexican leadership had the primary responsibility to protect civilian lives and property. We do not know all of the early communication that occurred between Scott and Veracruz's leaders, nor do we fully know the thinking behind the walls of Veracruz when they saw U.S. ships on the horizon in early March, but certainly the Mexican leadership should have taken actions to protect civilians. In this case, what is particularly craven—at least when one allows one's mind to explore the possibilities—is that the Mexican leadership did not try to come to an arrangement early on to protect civilians, but only did so after refusing substantive parley at the beginning of the siege and bombardment. It was only later that the Mexican leadership attempted to use civilians as a trump card against Scott's forces.

The human shield motif is complex and no two situations are alike, but it has been the declared policy of individuals like Saddam Hussein and Slobodan Milosevic to assume that Western forces would be shackled by their military and political ethics (and CNN) and thus not respond with robust force against them. This is not new: U.S. GIs encountered this in the Pacific during World War II, in Korea, and in Vietnam. In such instances, Western leaders must take human life and property into account, on both sides of the conflict, but not necessarily be stymied by such nefarious, inhumane actions. The primary moral responsibility lies on those leaders for putting their citizens into such situations. This is another reason why it is important for just war scholarship to return military necessity to *jus in bello* criteria.

5 Conclusion

Battles raged on for the next eighteen months, concluding on 2 February 1848 with the signing of the Treaty of Guadalupe-Hidalgo, ending the war. Of the 104,556 regulars and volunteers who served in the American Army, 1,551 (1.5%) were lost to combat and 12,229 (11%) were lost to disease, a death toll of 13,780. Mexican records are less precise: total military personnel, including soldiers and guerrilla forces, was about 82,000. Approximately 14,700 Mexican soldiers and 2,100 guerrillas fell in battle. At least 1,000 civilians died in combat and an

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untold number died due to disease or at the hands of U.S. and Mexican military personnel, Mexican guerrillas, and American Indians.[44]

Did the U.S. military balance military necessity, proportionality, and discrimination in an ethical manner? Theodore Parker, a vocal American critic of the war, conceded that it was 'conducted with as much gentleness as a war of invasion can be.'[45] Robert E. Lee, a veteran of the war, remembered that the Americans 'fought well and fought fairly … in a manner no man might be ashamed of.'[46] Ulysses S. Grant reflected, 'The troops behaved well in Mexico, and the government acted handsomely about the peace … Once in Mexico … the people, those who had property, were our friends.'[47] Francis Giffard, the British Consul, considered Scott's bombardment of Veracruz to be an example of unnecessary brutality, but conceded his shelling tactic succeeded in forcing the surrender.[48] Lerdo de Tejada, a renowned Mexican historian, conceded that Veracruz endured little more than foreign occupation, an occupation that allowed them to gain 'several profits.'[49] Gutierrez de Estrada, a highly regarded Mexican diplomat, observed that the Americans provided Mexicans with greater security of life and possession than their native government, which had been in never-ending intrigue and tumult since independence from Spain a quarter century earlier.[50] Percy William Doyle, British *Charge d'Affaires*, surveying the populace from Veracruz to Mexico City noted that. 'From the account of the Mexicans themselves [the American Army] seemed to have behaved very well.'[51]

This account used the Battle of Veracruz to underscore the interwovenness of the principles of military necessity, proportionality, and discrimination. The focus was to demonstrate a robust principle of prudential battlefield military necessity, defined as the ethical principle of stewardship. We want leaders, at the tactical, operational, and strategic levels, to appropriately conserve the resources at their disposal. Those 'resources' are primarily the lives of citizens—military personnel are citizens. Moreover, the troops are the family members of other tax-paying citizens, and all of the military materiel is provided by tax-paying citizens. In short, there is a direct link between husbanding battlefield

44 Crawford (n 37) 68.
45 Smith (n 39) 324.
46 Lee (n 5) 43.
47 Russell Young (n 6) 447–448.
48 *Ibid.* 33–34.
49 *Ibid.* 221.
50 *Ibid.* 232.
51 *Ibid.* 231–232.

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resources at the tactical and operational levels and the social contract between political leaders who are the nexus point between the tax-paying, voting citizenry on the one hand, and on the other hand, flesh-and-blood troops in the field. Military necessity involves principles of troop protection, economy of force, effectiveness, and the aim toward victory that link necessity to proportionate battlefield strategies and the rightful limitations imposed by differentiating lawful and unlawful targets. It is time for scholars in the humanities and social sciences to re-engage the other tradition of just war thinking, that of the formal law of armed conflict, which always trains our soldiers on the principle of military necessity. Such analysis may provide not just fruitful for future scholarship, but provide a better multi-dimensionality for working out the moral obligations that leaders have for stewardship of vital resources.

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CHAPTER 7

The Ethics of Eviction Agents versus Bombardment in Urban War

Context for the Drone Debate

Charles Knight and Seumas Miller

Summary

The aim of this chapter is to highlight an ethical dilemma at the intersection of civilian harm and military capabilities. We ask what level of risk may morally be demanded of soldiers fighting in urban areas if use of wide area effect explosive weapons is to be avoided? The challenge is that buildings conceal and protect while exposing advancing forces to ambush. Civilian presence constrains firepower. Nevertheless, as attackers suffer increasing casualties, they revert to explosive firepower from necessity, causing civilian casualties and reverberative harm. While not intentional, this foreseeable consequence of 'wide-area-effect' explosive munitions presents a legal, moral and ethical challenge. Our paper explains why high explosive weapons have become the default and offers a legal overview before making an ethical comparison of 'eviction' alternatives including flame and chemical weapons. We argue that a possible way out of this dilemma involves the use of weapons such as direct fire explosive weapons on buildings.

Keywords

Stalingrad – Grozny – Mosul – Raqqa – civilian harm and military capabilities – eviction agents – drones

1 Introduction

As the world rapidly urbanises, armed conflict increasingly happens in populated urban areas, and when it does, larger and larger populations are affected.[1]

1 William G. Adamson, 'Megacities and the US Army' (2015) 45 *Parameters: US Army War College* 45.

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Many more civilians are becoming direct casualties of war and the immediate suffering and loss of life is compounded by second and third order or 'reverberative' effects.[2] Widespread physical destruction by bombardment leads to disease and starvation either because of loss of power, water, sewage, medical services, food distribution infrastructure, or because civilians are forced to flee without resources or shelter. While damage, civilian casualties and suffering are not necessarily intentional, they are foreseeable. For militaries this superimposes a moral and ethical challenge over the inherent physical and psychological difficulties of conducting urban combat.

New means of fighting such as remote-controlled weapon systems potentially provide armies with less destructive alternatives than bombardment. However, the potential for such systems to be autonomous has generated controversy.[3] It may be helpful to frame the debate about new technologies within an understanding of several other tactical approaches to urban operations, which present comparable ethical challenges but may offer reduction in civilian harm.

The suffering of civilians in urban conflict is not new, but global urbanisation is dramatically increasing its scale, which is becoming an urgent humanitarian concern for entities such as the International Committee of the Red Cross (ICRC). Their focus is the military use of 'area-effect' explosive artillery and air-delivered munitions, which may be less discriminate and more destructive.[4] Area-effect explosive weapons are typically used by attacking forces to offset the advantages that urban terrain offers defenders.[5]

History repeatedly shows lightly armed forces exploiting urban terrain to inflict heavy casualties and impose delay on attackers. Defenders are hidden and protected amongst urban structures, while attackers are channelled into streets or open areas where they are vulnerable from three dimensions. These characteristics are what enabled the Soviets to draw the Germans into the protracted attritional Battle of Stalingrad in 1942, which turned the tide of World War II. At one stage in this battle, a handful of Soviet snipers, concealed in dominating positions, shot any German infantrymen attempting to cross an

2 Isabel Robinson and Ellen Nohle, 'Proportionality and precautions in attack: The reverberating effects of using explosive weapons in populated areas' (2016) 98 *International Review of the Red Cross* 107.

3 Frank Sauer, 'Stopping 'Killer Robots': Why Now is the Time to Ban Autonomous Weapons Systems' (2016) 46 *Arms Control Today* 8.

4 Kenneth Cross and others, *Explosive Weapons in Populated Areas* (ICRC Report 'Technical consideration relevant to their use and effects' 2016).

5 Michael John-Hopkins, 'Regulating the conduct of urban warfare: lessons from contemporary asymmetric armed conflicts' (2010) 92 *International Review of the Red Cross* 469.

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open area and halted an entire enemy division. Yet armoured vehicles can be equally vulnerable on streets. In the 1985 battle of Grozny, Chechen fighters using handheld antitank weapons ambushed Russian armoured columns that were moving channelled along streets. After knocking out the leading and trailing elements, the Chechens systematically attacked those trapped in between, destroying over 150 armoured vehicles. Contemporary adversaries have demonstrated similar tactics in Mosul, Raqqa and Marawi, but added the extensive use of explosive booby-traps and suicide bombs' to inflict even greater levels of casualties on attackers.

Confronted by the difficulty of advancing against a determined defender, almost invariably, the attacker will turn to apply high explosive firepower to the known or possible positions of lurking enemies. They will typically employ mortars and artillery fired at high angles or air delivered munitions to reach over urban obstructions. Unguided projectiles fired at high angle are not expected to fall exactly where aimed, rather a number are fired to create a predicted cluster pattern of hits overlaying the target: area fire. Each munition has a radial blast and fragment effect, so by firing multiple rounds, the target is expected to be impacted by the aggregate effects. In urban areas, buildings offer individuals concealment and protection while generally absorbing and confining blast and fragments, so many more rounds are required to neutralise targets than in open country. While guided munitions can be used to precisely strike a target, they often have large and very destructive payloads, and a proportion of them will fail to guide correctly. The result of high explosive air delivered, or high angle firepower is massive destruction. To avoid this, in many cases armies have begun their urban fight with restricted rules of engagement intended to limit destruction and civilian casualties. However, they have then reverted to the use of firepower in the face of their own losses.[6] In practice, avoiding foreseeable casualties amongst their own soldiers has outweighed foreseeable civilian casualties.

Weapons exist that offer attacking forces the prospect of 'evicting' enemies from urban terrain with lower casualties on all sides. However, the most effective proven eviction agents are fire and chemical weapons. The latter are banned in war, and the former present moral challenges, although they may clear urban terrain with reduced destruction. For example, during the 1945 battle to clear Groningen in the Netherlands,[7] Canadian troops were denied artillery to limit damage and civilian casualties. Nevertheless, the use of armoured

6 Alice Hills, 'The intractable nature of urban operations' (2001) 4 *Civil Wars* 113.

7 Jeffrey D Noll, *Restraint in Urban Warfare: The Canadian Attack on Groningen, Netherlands, 13–16 April 1945*, (Master's thesis 2013).

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flamethrowers against points of resistance systematically collapsed German resistance. This presents an ethical conundrum: is it justifiable to reduce the total number of people harmed, especially non-combatants, by using technologies which are effective but are banned or little used because they are perceived to cause unnecessary suffering?

This paper will examine the ethical questions involved in using high explosive weapons and several alternatives that have proved effective. The purpose is to bring greater clarity to the debate and provide a theoretical framework for future consideration of other technologies, for example, semi or fully autonomous weapon systems. For example, we examine the ethical dilemma of the WWII use of 'projected' flamethrowers which arguably increased individual suffering but reduced total harm. In doing so we are not focussed on the actual use of such weapons as most armies (with the notable exception of the Peoples Liberation Army)[8] regard them as obsolescent. Rather, we hope that the exploration of relative harm may be helpful in exploring contemporary questions of lethal autonomy.

This chapter has three sections. The first introduces urban warfare and explains why high explosive weapons have become the default. It then considers the technically proven alternative methods, incendiary weapons, chemical weapons, demolition approaches, and the use of obscurants. The second section examines the legal framework of each of the established technologies. The third analyses their employment from an ethical perspective. The paper concludes by briefly reviewing the alternatives to bombardment.

2 The Growing Challenge of Urban Warfare

Humans have often fought for towns and cities, though war-deciding battles were often outside them. They lie at nodes that control communications, resources and access and often have great political and economic significance. Since WW2, warfare in urban areas is increasing for several reasons. The UN estimates that since 2007, most people live in urban areas and cities which cover a growing proportion of the planet's surface. This fact increases the probability of fighting there. Furthermore, many conflicts occur within and between these growing urban communities. In addition to geographic factors, and the enduring reality that the structures of an urban area have always

8 'China forces used flamethrower to hunt Xinjiang 'terrorists': army newspaper' (*Reuters*, 23 November 2015) https://www.reuters.com/article/us-china-security-xinjiang-idUSKBN0TC0QT20151123.

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offered physical protection and other advantages to the defender, there is a new two-part incentive to fight there. Technology increasingly renders people and equipment visible in open, rural, mountain, or jungle terrain. Therefore, cities are the one environment where is possible to hide from sensors overhead. For example, currently available sensors cannot detect what is behind concrete walls or floors at any distance. Additionally, increasing moral concerns amongst domestic and international audiences about civilian casualties, combined with the ability of new media to publicise those casualties, dictates that the presence of civilians inhibits most militaries, at least in liberal democracies, from using their full firepower.

The challenge of fighting in urban areas is not new. Two and a half thousand years ago the Chinese warrior philosopher Sun Tzu advised that attacking cities was the 'worst policy' because of the difficulty and costs of doing so.[9] Yet, down through history from the Peloponnesian War on, sieges were central to warfare. The blood price paid by attacking troops was one of the reasons that until at least the 16th century, the norms of war permitted the slaughter of the inhabitants of a town that had to be taken by assault.[10] However, after the Treaty of Westphalia there was a shift, in Europe at least, towards battles between the large armies of kings. These were led by members of social elites who ascribed to norms favouring decisive battle in the open, resulting in fewer battles within towns and cities.[11] This may explain what SLA Marshall described[12] as the 'curious neglect of urban operations' by great military theoreticians like Jomini and Clausewitz. Many towns were the sites of battles in the First World War, but except for a few street fights at the beginning of the war, battles in trenches in the rubble were not markedly different from battles in trenches in the mud. The relative defensive value of urban terrain became apparent between the world wars in conflicts in Spain and China. These lessons were either ignored or promptly forgotten by the major militaries. In early WW2, there were heroic 'last stands' against the advancing Germans in cities like Warsaw and Calais. Still, the defensive scope of urban terrain was not decisively exploited until the German invasion of Russia in 1941. As they withdrew East, the Soviets slowly discovered the scope for using urban areas to negate German advantages, culminating in the protracted street battles of Stalingrad, where the entire German 6th Army was drawn into an attritional contest of

9 Sun Tzu, *The art of war* (trans. Samuel Griffith, Clarendon Press 1963) 3.

10 Geoffrey Parker, 'The etiquette of atrocity: the laws of war in early modern Europe' in *Empire, War and Faith in early modern Europe* (Allen Lane 2002) 144–147.

11 Gregory J Ashworth, *War and the City* (Routledge 2002) 112.

12 SLA Marshall, *Notes on Urban Warfare* (*AMSAA-SP6*) (AMSSAA Special Publications 1973).

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endurance and thus 'set up' for the enveloping Soviet counterattack that annihilated it and changed the course of the war.

2.1 *The Nature of Urban Fighting*

It is helpful to briefly describe why urban terrain assists the defensive over and above the advantage offered by concealment. Urban areas, to a greater or lesser extent, constitute an obstacle to movement. Advancing forces are channelled to move predictably along streets or open spaces, which restricts their capacity to manoeuvre. At the same time, those open spaces are usually exposed and overwatched from buildings. Wherever those buildings are physically substantial they offer an instant fighting position where a defender can engage through a window or other opening from behind protection. From an attacker's perspective, buildings and their rooms form a mass of protective cells. In any of these, an adversary might be lying in wait or have laid explosive devices. Attackers are obliged to clear every space of every building along the route they move, lest defenders lie low and emerge to counterattack from the rear. Clearing not only takes a great deal of time. When attackers approach a building or enter a room, they are usually at a great disadvantage relative to the unseen defender, who has the advantage of knowing where and usually when they will appear. In an urban fight against a determined resistance, attackers will inevitably suffer accumulating casualties unless they employ some means of offsetting the defenders' many advantages. Small arms alone are inadequate. This reality is obscured by a misguided perception of urban warfare as a 'person-on-person' shooting contest informed by Special Forces (SF) hostage recovery or raid operations.[13]

Almost all contemporary Western media portrayals of attacks on buildings show small groups of poorly trained adversaries armed only with light weapons defeated by similarly armed SF, by implication through superior skill and tactics. This downplays the advantages attackers have in a special operation that do not apply in conventional urban fighting. Above all, as McRaven's analysis of SF operations shows, they depend on a high degree of surprise.[14] Additionally, before assaulting SF are usually able to isolate the objective building from outside interference, use technical means to identify and locate people in the building, make multiple simultaneous entries and employ a variety of sophisticated distraction devices. These factors have underpinned past SF

13 Anthony C. King, 'Close Quarters Battle: Urban Combat and "Special Forcification"' (2016) 42 *Armed Forces & Society* 276.

14 William H McRaven, *The theory of special operations* (Thesis, Naval Postgraduate School 1993) 11.

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successes, such as the British SAS recovery of the Iranian Embassy in London, the Israeli raid on Entebbe, and the mission to kill Bin Laden in Pakistan.

Yet as the tactical competence of adversaries grows and is combined with the widespread use of explosive suicide vests and booby-traps, the notion of expert SF simply moving through a building and surgically eliminating an enemy is unrealistic and creates dangerous public expectations. Indeed, elite police and SF themselves increasingly revert to 'traditional' methods. In the US in 2016, a special police unit used a robot to deliver an explosive charge for killing an armed man who had shot several officers and was in a location waiting to ambush the police.[15] In recent campaigns against ISIL in Mosul, the Western SF support provided to the Iraqis emphasised locating adversaries and destroying them with high explosive precision bombs. As SF confront more conventional threats, they have in effect discovered what conventional armies have learned, forgotten and relearned: the need to use firepower before any assault to incapacitate or evict – that is to drive defenders into the open.

Conventional forces through the ages have repeatedly discovered that troops with handheld weapons trying to eject a determined enemy from buildings suffer casualties. That was true for Flavius's blade-armed legions in Jerusalem in AD 60 and true for the muzzle-loading rifle-armed soldiers putting down the revolutions in cities across Europe in 1848. In the face of this discovery, they then revert to a proven method: artillery to destroy the building or fire to burn it down. However, since the late 1800s the attacker has had another option: High Explosives (HE). With progressively less risk to the user and less precision, HE munitions can be thrown or placed, fired directly on a flat trajectory by mobile guns or delivered from high overhead by mortars, howitzers, or aircraft. Let us consider the use of explosives at these different levels.

At the lowest level of urban fighting, building clearing, the basic combat technique is to precede every movement into a new room or part of a building with one or more explosive grenades in the hope that the blast or fragments will incapacitate defenders. Considerable risks remain. Soldiers must expose themselves to use hand grenades, which might be thrown back. While various types of rifle-mounted launchers project grenades over longer ranges, they have limitations for urban fighting, especially within buildings. They require an unobstructed line of sight and flight from the firer's position into the space where the explosive effect is required and, by design, must travel a minimum distance before they explode. Furthermore, most rifle launched grenades are

15 Zachary A Kaplan, 'R2D2 Or iRobot: Can Armed Robots Be a Friend to Police without Being a Foe to the Public' (2018) 32 *Notre Dame JL Ethics & Pub Pol'y* 603.

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relatively small and their explosive power will not reliably incapacitate everyone in a room.

'RPG' or 'bazooka' style launchers designed to defeat armoured vehicles deliver larger explosive projectiles, but their shaped charge warheads are primarily designed to blast small deep holes in steel. Against walls, their penetrating explosive effect is very localised. Additionally, these launchers often have a backblast which is a hazard to the user within buildings. While there are now special urban combat projectiles capable of either penetrating a wall and exploding beyond or breaching a large enough hole to use as an entry, few if any Western contemporary armies hold sufficient stocks of such grenades to systematically clear large numbers of buildings. In contrast, the Chinese PLA adoption of such weapons appears widespread.[16] In similar vein, and reflecting lessons from Chechnya, the Russians have a family of shoulder fired launchers that use thermobaric warheads[17] to give infantry weapons a blast effect equivalent to medium artillery.

Explosive shells delivered directly by tank and artillery guns firing through walls into buildings have devastating effects and will incapacitate defenders in multiple rooms. The systematic application of such fire dramatically reduces risk and delay to attacking infantry. However, the obstruction of other buildings means that it is often difficult to find a suitable position from which it is possible to fire directly at a particular building, and defenders will choose positions with this in mind. Furthermore, the locations from where tanks or artillery can fire into a building are often very exposed and predictable, making these platforms a relatively easy target to enemy Improvised Explosive Devices (IED) or handheld anti-armour weapons. This limitation has become more severe as armoured vehicles and artillery have become bigger and more bulky and therefore difficult to deploy in narrow streets and confined spaces. This increasing vulnerability, combined with reduced tolerance of own casualties means that direct fire from armoured vehicles is relied on less than in historical urban battles, even though it is relatively discriminate.

The above methods have consistently proved insufficient to defeat determined defenders on urban terrain, and armies have turned to artillery and air firepower. This dependence is central to our discussion. In most urban battles, for example; Manilla 1945, Hue 1968, or Grozny 1994, the attacking commander

16 e.g., the Norinco DZJ-08 'Type 08 80-millimetre Individual Multipurpose Assault Ammunition System'.

17 e.g., the RPO-A Shmel 'Rocket-propelled Infantry Flamethrower-A'. This weapon has a fuel/air thermobaric blast effect in contrast to the incendiary warhead RPO-Z version. Confusingly both are classified as flamethrowers in Russia.

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initially restricted the use of firepower. Heavy casualties and a consequent inability to progress dictated a shift

When a force advancing in an urban area meets resistance and starts to take casualties, it will typically begin to employ artillery and mortar fire fired indirectly on a high trajectory to fall onto buildings ahead of the advance. Any single shell or bomb travelling on a high trajectory will tend to be dispersed over an area. Therefore, multiple rounds are fired to achieve an assured effect, especially if a strike is required on a particular part of a building. More sophisticated forces may employ precision-guided shells or bombs delivered by aircraft, but the latter not only tend to have much more destructive power but a proportion of guided weapons will be misdirected or malfunction. A combination of guidance system errors in precision munitions, the normal dispersion of indirectly fired munitions, and larger warheads result in a 'wide impact area' or 'wide area effect' that together typically account for the devastation of urban areas during combat.[18] There are alternative approaches.

2.2 *Projected-Flame-Throwers*

Flamethrowers were developed for attacking fortifications. For this paper, we only mean weapons which project fuel and the principal effect is heat, thus excluding aircraft napalm bombs or liquid fuel-air explosives. Flamethrowers use pressure, normally from stored gas, to project liquid fuel in a jet that can be directed into a space to be neutralised. Flame-launchers deliver projectiles into such a space where it bursts to spread burning material. In either case, the flame will billow and flow around corners, denying hiding places. This provides a unique capacity to deal with defenders waiting to ambush at close quarters. Those who do not flee may be burned to death or asphyxiated, while booby-traps will often be disrupted or detonated. Historically flamethrowers proved invaluable in clearing determined defenders in buildings, bunkers and caves, notwithstanding poor reliability and the risks involved in getting close enough to use the target with man-pack versions. The first advantage of flame weapons is to reach into enclosed spaces that other weapons cannot. This proved vital during the WW II US operations during urban fighting in the Philippines[19] and against deep fortifications in the Pacific Islands. The deeply ingrained code of the Japanese soldier forbade surrender, no matter that defeat was inevitable. Their soldiers would use every subterfuge to kill attackers before dying themselves. If they waited in caves, bunkers, or fortifications, flame often proved the

18 Cross (n 4).

19 Leonard McKinney, *Portable Flame Thrower Operations in World War II* (1949) 118.

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only way to prevent them doing so. The second and arguably greater advantage is psychological – fear of flame significantly changes enemy behaviour. US Army WW2 analysis showed 'prisoners were the normal results of most flame actions in Europe' when they would not otherwise surrender. For example, in the September 1944 battle for the French city of Brest, in order to dislodge the tough, well-entrenched and well-stocked German Fallschirmjaeger, the US troops brought up British armoured flamethrowers. However, the behaviour of Japanese soldiers further highlights the psychological impact of flame. The record shows that if faced with a flamethrower and unable to withdraw, Japanese soldiers sometimes would hesitate to open fire and draw attention to themselves[20] or were seen to commit suicide with their grenade or rifle.[21] Furthermore, while surrender in the close battle was the exception during the Battle of Okinawa, groups of Japanese soldiers were persuaded to surrender by sophisticated psychological operations, which, on the one hand, appealed to their sense of discipline and, on the other, told them how we 'would regret the unfortunate consequences of the use of flamethrowers'.[22]

The utility of fire to evict defenders was equally exploited by the Germans. During the November 1944 fighting to eliminate the encircled allied paratroopers in the Arnhem area, the Germans initially took heavy casualties when their infantry attempted to assault and clear building by building. They had only limited artillery capability, and their response was to either bring up a self-propelled gun and slowly demolish the building or employ flamethrowers – while systematically setting fire to whole areas of town.[23] This drove the allied paratroopers from defensive positions and denied them alternatives to withdraw to. It also caused the civilian population to flee. While their suffering was acute, there were probably fewer civilian casualties than would have occurred had the Germans relied more on indirect artillery fire. While both the military utility of flamethrowers in the urban attack and the general risks to their operators are well described in the literature, potential benefits to civilian populations are less well recognised.

After D-Day in June 1944, during the early urban battles to eject German defenders from towns and cities in France, such as the assault on Caen, the

20 *Ibid* 198, 199, 223, 130, 133, 112, 71, 148, 160.

21 Roy Edgar Appleman, *Okinawa: The Last Battle*, vol 2 (Historical Division, Department of the Army 1948) 467.

22 Herbert A. Friedman, 'Okinawa Psyop' (*PsyWarrior*) http://www.psywarrior.com/OkinawaPSYOP.html.

23 Antony Beevor, *Battle of Arnhem: The Deadliest Airborne Operation of World War Ii* (Penguin Books 2019) 192.

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attack was preceded by massive air bombardment, killing many civilians. Later, when the fighting had moved to the Netherlands, the Allies avoided repeating this pattern. Consequently, in pursuit of restraint, flamethrowers, and more particularly flamethrower 'Crocodile' and 'Wasp' armoured vehicles were key to a tactic of a slow, systematic advance by the infantry through the towns.[24] Whenever resistance was encountered, the Crocodiles came forward to fire a demonstration burst of flame down the street – also providing a smokescreen for the vehicle to advance. Normally resolute, German defenders recognised that if they stood fast, they would be burned where they fought without achieving their mission. The effect was that they steadily withdrew in the face of the advance or surrendered. Crucially, while a significant number of target buildings and those adjacent to them were burned down, the total urban destruction was far less than in the earlier French battles, and civilian casualties were a tiny fraction of those inflicted by air bombardment.

It is important to note that the use of flame, a subclass of incendiary weapons under IHL, is, contrary to popular belief, not prohibited. Air-delivered incendiary munitions may not be used[25] against a military objective within a concentration of civilians. Non-air delivered incendiary weapons, including flame, may only be used where there is a clear separation between the military objective and any concentration of civilians, and all feasible precautions are taken. Munitions primarily designed to generate smoke but have an incendiary effect – for example, white phosphorus, are excluded from this prohibition. The removal of flamethrowers from the inventories of most western militaries partly reflects concerns that using such weapons may inflict unnecessary suffering (discussed later).

2.3 *Chemical Weapons*

Lethal toxic chemicals have been used in war throughout history. Despite international agreements in the late 1800's banning them, a variety of poison gases were extensively used in WW1 in an attempt to break the deadlock of trench warfare.[26] The capacity of heavier than air gasses such as chlorine and phosgene to flow along trench systems and down into bunkers proved able to evict soldiers without respirators, but tactical advantages did not lead to strategic success.

24 Noll (n 7).

25 *UN. Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons* which may be deemed to be Excessively Injurious or to have Indiscriminate Effect.

26 Seumas Miller, *Dual Use Science and Technology, Ethics and Weapons of Mass Destruction* (Springer 2018) Chapter 5.

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Fear of reprisal deterred poison gas use in WW2, with both Allies and Axis powers holding stocks. However, during the Cold War, NATO and the Warsaw Pact planned and trained for chemical warfare. The Soviets, in particular, planned to use chemical weapons to reduce the problem presented by urban defenders.[27] Their doctrine for the attack specified neutralising the threat to their flanks from bypassed urban areas by using 'persistent', (i.e., thickened, and slow to evaporate), nerve agents, and mustard blister compounds. This would 'fix' defenders as they would be forced to concentrate on decontaminating. In contrast, when the Soviets planned to assault an urban area, a rocket artillery 'fire strike' delivering a mix of HE and the quickly dispersing agents Cyanide or VX might have preceded a break-in attack conducted still mounted in armoured vehicles. The gas was expected to severely hamper infantry anti-armour teams who would otherwise make a mounted assault too costly. It seems likely that these techniques would have given the intended tactical advantage, but they would have caused far heavier casualties amongst unprotected civilian populations. Such vulnerability was demonstrated in March 1988 when the Iraqi air force dropped nerve agent and mustard gas bombs on Halabja, killing an estimated 5,000 civilians. Reported Syrian use of chemical weapons in recent years also appears to have been intended to kill civilians to intimidate and deter rebel groups rather than for tactical purposes. Analysis suggests that lethal toxic chemicals have failed in this and have been politically counter-productive.[28] Indeed, they do not offer advantages over high explosives from a civilian casualty reduction perspective.

The use of any kind of chemical weapon in war is prohibited by international treaties. This includes those that are intended to have a temporary disabling effect rather than kill or permanently injure.[29] The most well-known nonlethal agents are 'riot-control' irritant smokes or gasses such as CS or CN delivered by launched or thrown grenades. Aside from use to disperse crowds in public order settings, they are used by police either to evict armed offenders from buildings or to precede an assault to rescue hostages. Notwithstanding prohibition, CS has been used in interstate warfare occasionally, for example by the

27 C. N. Donnelly, 'Fighting in Built-up Areas: a Soviet View – Part II' (1977) 122 *The RUSI Journal* 63–66.

28 Geoffrey Chapman, Hassan Elbahtimy and Susan B Martin, 'The Future of Chemical Weapons: Implications from the Syrian Civil War' (2018) 27 *Security Studies* 704.

29 Christopher M Timperley and others, 'Advice from the Scientific Advisory Board of the Organisation for the Prohibition of Chemical Weapons on riot control agents in connection to the Chemical Weapons Convention' (2018) 8 *RSC advances* 41731.

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US troops in the recapture of Hue city in Southern Vietnam in 1968.[30] This limited experience suggests that CS in conjunction with HE and other munitions can be useful in inducing a defender to withdraw. During intrastate conflict against militants, where the prohibition does not apply, CS has been frequently used, for example, in the 2017 Battle of Marawi.[31] It proved particularly useful during battles to clear mosques because of political direction that explosive weapons were not to be used there.

Incapacitating agents that variously have hallucinogenic, sedative, bodily function disrupting, or anaesthetic effects were trialled for military use during the Cold War before the 1997 chemical warfare convention was signed. Non-anaesthetic approaches demonstrated the potential to degrade soldiers' capacity to fight, however, these effects were highly unpredictable because of variations in gas dispersal by wind. It appears, though, that most trials were conducted against troops in the open and it would seem likely that in urban areas, and particularly within buildings, reliability would be higher. Concentration issues particularly constrain anaesthetic approaches as the dose required to sedate varies greatly from person to person while the difference between a dose that will render a person unconscious and a dose that kills is narrow. Despite this, anaesthetic gases have been employed in urban operations. When Chechen terrorists took over 800 hostages in Moscow theatre in 2002, the Russians flooded it with a still unknown, but probably fentanyl-based, anaesthetic gas that quickly rendered everyone inside unconscious. This enabled the Russian Spetsnaz to kill all the terrorists without them detonating their suicide devices. Unfortunately, many hostages also died from the effects of the anaesthetic gas as resuscitation measures were inadequate.[32]

Nevertheless, it is technically feasible to deliver incapacitating chemicals within selected buildings at relatively predictable concentrations, and new incapacitating compounds are undoubtedly being developed. Their use might reduce the risk to assaulting forces dramatically: combatants can be killed or taken prisoner and resuscitation and/or antidote administered. Some fatalities amongst non-combatants remain likely within targeted buildings, but the risks of this appear less than with other techniques for neutralising before during assault. Crucially the risk of serious harm to non-combatants beyond targeted buildings is probably negligible. This poses an ethical dilemma.

30 Edward J. IV O'Neill, 'Street fighting: Lessons Learned from the Battle for Hue For 21st Century Urban Warfare', (Louisiana State University 1989) 37.

31 Katja Theodorakis, Charles Knight, *The Marawi crisis-urban conflict and information operations* (Special Reports, 2019) 16.

32 Michael Crowley, *Chemical Control* (Springer 2016) Introduction.

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Where adversaries do not have protective equipment, employing nonlethal chemicals within the buildings sheltering them is likely to offer similar suppressive effects to bombardment, but without the attendant widespread destruction. This would offer the prospect of substantially reducing civilian casualties, however using chemicals in this manner would be in contravention of the Chemical Weapons Convention. Thus, the desirable goal of maintaining a prohibition on all forms of chemical weapons, precludes the development and use of categories that would reduce total harm.

2.4 *Direct Destruction Approaches*

An established approach to avoiding the risks of systematically clearing buildings containing defenders is to collapse or destroy specific buildings or significant parts of them, using direct fire methods – as distinct from indirect or air bombardment of an area. Advantages include that because such firers are near, and by definition have a view of the target, they have much better situational awareness, there is less chance of munitions straying wildly from the intended target, and generally it is easier to confine blast and fragmentation effects within target buildings.

Until recent times, military forces achieved these effects by firing large calibre HE projectiles or positioning demolition charges. During World War II, British Commonwealth forces had a special engineering tank that fired a short-range 230 mm demolition charge which would destroy individual bunkers or buildings. At the same time, the Soviets employed heavy artillery guns fired directly to achieve the same effect. The German army made extensive use of tracked turretless, self-propelled armoured vehicles, some with large calibre weapons specifically intended for use against fortifications and buildings. The largest of these, the Sturmtiger, fired a 380 mm rocket projectile capable of collapsing a large building with a single round. Significantly, such specialised systems have long been retired without replacement.

The Goliath was a German suitcase-sized demolition tank filled with HE and remotely steered with a cable towards a target and detonated there. In similar vein the Borgward IV, a larger, car-sized and radio-controlled unmanned armoured vehicle could be used to drive up to a target and drop a large demolition charge before withdrawing.[33] Finally, the Taifun-Gerät[34] was a system

33 Charles Knight, 'The World War II capabilities we need for today's urban battlefield' (*Modern War Institute,* 2019) https://mwi.usma.edu/world-war-ii-capabilities-need-todays-urban-battlefield/.

34 *Minen und Hohlladungen: Lexikon der Wehrmacht,* https://lexikon-der-wehrmacht.de/Waffen/minen.htm.

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for pumping an explosive gas mixture into enclosed structures before igniting an explosion, which was used, for example, to eliminate partisans operating in sewers. The Germans extensively used such demolition systems to supress the Warsaw Uprising in 1944 and they enabled the Polish Home Army to be systematically destroyed without the need to enter and clear all objectives in detail.

There are occasional reports of tanks being used for direct mechanical destruction of buildings during World War II. Some instances are also reported of bulldozers on the Allied side being used eliminate bunkers by simply covering their entrances and firing points; however, extensive use of heavily armoured bulldozers for urban combat is comparatively recent. Since about 2002 and influenced by the threat from booby-traps and adversaries intent on martyrdom, the Israeli Army has increasingly employed very heavily armoured bulldozers and armoured excavators to push safe manoeuvre lanes through buildings and collapse those from which fighters engage.[35] This approach has proved tactically and psychologically effective and appears to have successfully reduced casualties on all sides. However, the context of the use of the method in the occupied territories has made it politically controversial.

2.5 *Obscurant Smoke*

The use of smoke to screen movement in war is an ancient tactic that became commonplace during World War II. Allies and Axis forces had special units equipped with smoke generators capable of creating massive smokescreens able to blanket many square kilometres and conceal the movement of armies. They employed smoke shells to create smaller screens for tactical advantage. Western armies have since neglected this capability. They now tend to rely on modest stocks of smoke shells and rarely train under smoke conditions because of health and safety concerns.[36] In contrast, Russia still maintains smoke generator units. Its armoured vehicles can generate smoke screens through their exhaust systems and they have a family of hand-held launcher systems capable of delivering different types of smoke munition.

There are three main smoke-shell types: Base Emitting/Base Ejection (BE) artillery shells; non-white-phosphorus bursting; and white phosphorus shells.

35 Scott C. Farquhar, *Back to basics: a study of the second Lebanon War and Operation CAST LEAD* (Combat Studies Institute Press 2009) 94.

36 Lawrence A Bickford and Harry Salem, 'Screening Smokes: Applications, Toxicology, Clinical Considerations, and Medical Management' in Brian J. Lukey, James A. Romano Jr. Harry Salem (eds) *Chemical Warfare Agents: Biomedical and Psychological Effects, Medical Countermeasures, and Emergency Response* (CRC Press 2019) 277.

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All have lethal effects. BE artillery shells exude smoke after impact or are carriers that discharge several canisters which fall to the ground and generate smoke. It may take some minutes for a screen to build up, and further shells are required to sustain the screen. Non-white-phosphorus bursting shells contain an additional compound mixed with high explosives so that when they detonate, a large cloud of smoke is formed.

White phosphorous (WP) burns spontaneously in the air and creates an instant thick hot smoke screen when dispersed by a bursting charge. Because of its effectiveness it is used in mortar and artillery shells, tank main gun shell and special multi-barrelled screening dischargers for armoured vehicles. The use of WP remains controversial,[37] because particles of phosphorus cause severe burns and cannot readily be extinguished. In addition, many commentators regard its use in urban areas as a breach of the IHL prohibition on incendiary weapon use amongst concentrations of civilians.

However, all smoke munitions, including white phosphorus, degrade the enemy's capacity to kill with direct fire and offer a substantial tactical advantage to forces that have thermal imaging or equivalent equipment that allows them to see in the smoke when the adversary does not. If this is the primary purpose of using smoke then it is not in breach of the CWC, notwithstanding that a secondary effect of most smokes is to produce an unbreathable atmosphere which will cause adversaries to flee. Again, civilians face risks from asphyxiation or toxicity, but these will be far lower than if high explosive munitions are used.

3 Legal Aspects

International Humanitarian Law (IHL) is in large part expressive of the moral doctrine of the *jus in bello*-aspect of the Just War Theory. It prescribes ethically sound military conduct in war and prohibits the use of certain weapons. Thus, it seeks to ensure that harm is only inflicted on legitimate military targets. The foundation is diplomatic agreements between States who undertake to self-police. In general, IHL provisions have been quickly and widely ratified and then observed if weapon or conduct is easily defined, recognized and there is no great tactical disadvantage when all parties forgo the means – for example, the banning of expanding bullets. However, when removing a weapon might

37 Stian Nordengen Christensen, *Regulation of White Phosphorus Weapons in International Law*, vol 6 (Torkel Opsahl Academic EPublisher 2016).

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create a relative disadvantage – for example, banning of antipersonnel landmines weakens the relative defensive capacity of forces – ratification has been hesitant or incomplete.[38] Furthermore, the long-standing prohibition of weapons that cause unnecessary suffering has had limited effect because of its subjectivity – it is susceptible to widely different interpretations – especially when one considers that most weapons involve a high level of suffering.

The current ICRC focus on explosive weapons in populated areas continues a long-standing humanitarian desire to constrain weapons use in urban areas to protect civilians. However, effective rules have proved hard to devise, secure agreement to, and apply. This is because it is technically difficult to locate, precisely strike, and destroy adversaries hidden amongst urban terrain, even if only combatants are present. To do so with current weapon systems without inflicting harm amongst an intermingled civilian population is extraordinarily difficult. These difficulties provide the asymmetric advantage that defenders exploit, so armies are reluctant to accept constraints that might compound attacker disadvantage.

As IHL developed, states repeatedly judged that it was not in their interests to forgo a firepower option that may be necessary. For example, the Hague Convention of 1899 prohibited the bombardment of undefended towns. Yet, this provision was not widely ratified, and according to the subsequent 1907 Convention's permissive interpretation, a military target in a civilian area justified naval bombardment.[39] The air bombing of populated areas that began in World War I prompted the 1923 'Rules for Air Warfare', which attempted to limit targets to military objectives,[40] yet these failed to gain acceptance. This translated to practice in WW2. For the Allies, humanitarian considerations were trumped by the imperative of defeating the Nazis, which made the strategic bombing of cities a 'necessity'.

A very permissive notion of necessity was expressed in the 19th century German concept of *kriegsraison*, namely that 'extreme necessity overrules all law'.[41] The Nuremberg trials, convened after World War II to prosecute Nazi excesses, fully rejected the doctrine. Yet they ruled; '*Military necessity permits*

38 Adam Bower, 'Entrapping Gulliver: The United States and the Antipersonnel Mine Ban' (2020) 29 *Security Studies* 128.

39 John Borrie and Maya Brehm, 'Enhancing civilian protection from use of explosive weapons in populated areas: building a policy and research agenda' (2011) 809 93 *International Review of the Red Cross* 9.

40 Trevor Khan, 'The Application Of Military Objective To Warfare In The Modern Urban Environment' (2018) 18–07 *University of New South Wales Law Journal Student Series* 4.

41 *Viola Vincze, 'Taming the Untameable: The Role of Military Necessity in Constraining Violence'* (2016) *ELTE LJ* 93, 99.

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a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money'. Necessity is prohibitive of anything not required to meet a military objective,[42] but with this constraint satisfied, permissive of anything that is not specifically and unequivocally prohibited. Protocols adopted in and developed since 1977 outlawed indiscriminate attacks or deliberate targeting of non-combatants. While the underlying principled *distinction* between legitimate and illegitimate targets is not subjective, it provides minimal protection when civilians are incidental casualties of an attack on a military target. Moreover, the protective notions of *proportionality and precaution* remain necessarily subjective in that they are open to widely different interpretations.

The principle of *distinction*[43] requires parties to an armed conflict to distinguish between civilians and civilian objects and combatants and military objectives, and only to target combatants and military objectives. Attacks may not be indiscriminate, directed at anything but a military objective, too inaccurate to strike a specified military objective, used as a means not limited in space and time, or bombard an area of military targets amongst civilians and their objects. However, while the buildings of an urban area inherently receive the protection of being civilian objects, as soon as they are used by an adversary, they lose that protection. The tendency has been for militaries to address distinction by employing weapons and fire control systems that can strike a target with increased accuracy. The intention is, therefore, to be discriminate, however, system errors and the tendency of such munitions to be larger and do more damage can still create incidental and unintended harm[44] without breach of IHL. It follows that determining possible harm to civilians is not the same thing as defining civilians; the latter is a legal issue, whereas the former is often a challenging practical problem.

The principle of *proportionality*[45] specifies that a belligerent may only apply the force necessary to defeat the enemy, and attacks on military objects must not cause damage or loss of civilian life out of proportion to the direct military advantage anticipated. Proportionality is usually assessed in terms of the immediate effects of civilian casualties, although there is increasing support for the idea that militaries must give the long-term *reverberative* consequences

42 *Ibid*.

43 Emily Crawford and Alison Pert, *International humanitarian law* (Cambridge University Press 2020) 43.

44 Borrie and Brehm (n 39).

45 Crawford and Pert (n 45).

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of widespread damage greater weight.[46] Nevertheless, the proportionality rule does not determine the acceptability of incidental harm. There is 'uncertainty and disagreement' about how to 'balance the vague, abstract and dissimilar values of expected civilian harm and anticipated military advantage'. This 'implicitly accepts an undefined yet potentially very high level of civilian harm can be justified by users of force with reference to military necessity'.[47]

The principle of *precaution*[48] demands that belligerents take every feasible step to avoid civilian harm. A defender must if feasible, avoid placing military objectives in civilian areas and evacuate civilians when possible. In the attack, precaution requires 'taking every feasible step for verification of the target, choosing methods and means that minimise incidental damage, providing an effective warning to civilians when circumstances permit, and cancelling an attack if it becomes clear that it is not a military objective or would be disproportionate'.[49] However, what is feasible during intense urban combat might vary enormously and, importantly, be a matter of judgement based on, at least in part, unreliable and incomplete information. Similarly, precaution requires consideration of information that would have reasonably been available at the time, not in retrospect – and the city is a notoriously ambiguous battlefield.

The subjectivity of what may or may not be done in urban war flows from the unresolvable tension between military necessity on the one hand, and proportionality, distinction, and precaution on the other. This tension results from the inherent difficulty of making judgments based partly on unreliable and incomplete information, on the tendency to give greater weight to one's own interests, and, in war, the collective interest in winning the war. Brauman describes the result:

'*The fundamental point is that for political forces engaged in armed conflict, whether state or non-state actors, the threshold of what is tolerable depends on their interests. More generally, how the power treats the population will depend on how concerned* (*or not*) *it is about earning its goodwill*'.[50]

46 Robinson and Nohle (n 2).
47 Borrie and Brehm (n 39).
48 Crawford and Pert (n 43).
49 Robinson and Nohle (n 2).
50 Rony Brauman, 'Oases of Humanity and the Realities of War: Uses and Misuses of International Humanitarian Law and Humanitarian Principles' (2019) 1 *Journal of Humanitarian Affairs* 43 46.

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4 Ethical Analysis

Thus far in this paper various weapons of war have been described and their strengths and weaknesses in urban warfare discussed, not only in terms of their military effectiveness, but also of the extent to which they unavoidably cause harm to civilians and civilian objects and, therefore, potentially violate the *jus in bello legal* principles. However, these legal principles give expression to underlying moral principles but do so imperfectly. Accordingly, we now turn directly to a consideration of the relevant moral principles and their application to the use of the weaponry in question.[51]

In the conduct of war and, therefore, one would assume, in the application of the above *jus in bello* principles of discrimination, necessity, proportionality and precaution, moral weight has to be accorded in the various contexts of war in question (notably urban contexts)[52] to the lives[53] of: (1) one's own civilians; (2) enemy civilians; (3) one's own combatants; (4) enemy combatants. However, it is difficult to extract the moral weight to be accorded to each of these groups (as opposed to the two groups, combatants and civilians) from the four principles; rather, they provide only partial moral guidance. The principle of discrimination forbids the deliberate killing of civilians but does not accord greater moral weight to the lives of one's own civilians over the enemy's civilians. Likewise, the principle of precaution requires all feasible steps be taken to minimise harm to civilians but says nothing about the moral weight to be accorded to the lives of the combatants. Moreover, the application of the principles of military necessity and proportionality do not explicitly count the moral weight of the lives of combatants (whether one's own or enemy combatants) against that of the lives of civilians, assuming there is a trade-off to be made as there often is. For instance, if it is militarily necessary to bomb an area in which there are known to be some civilians, the question is whether the loss of civilian lives would be disproportionate relative to the military loss or gain at stake.

51 See Seumas Miller *Shooting to Kill: The Ethics of Police and Military Use of Lethal Force* (OUP 2016) for detailed discussion of these issues.

52 It is consistent with this way of speaking that each and every individual has equal moral weight. The idea is that in certain contexts of war greater moral weight is, *in effect* and justifiably, accorded to members of some groups over others and, in particular, civilians over combatants.

53 Of course, it is not merely lives but also, so to speak, limbs as well as cultural objects and so on that need to be taken into account. However, in order to simplify an already complex set of moral considerations we restrict ourselves in what follows to lives.

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As noted above, there is also the question of the temporal or diachronic scope of these principles. It may be necessary to put a certain number of civilian lives at risk to win this battle, but how do things stand when we contemplate the number of civilians lives to be lost if the war is to be won – which may depend in part on whether this battle is won or lost? After all, it might, for example, have been necessary for the Russians to win the battle of Stalingrad in order to win the war. Therefore, the sacrifice of a large quantum of civilians lives during the battle of Stalingrad, even if disproportionate relative to the end of winning that battle considered as a single discrete battle, might, nevertheless, be fully justified and, not disproportionate, given if it was necessary to win the battle of Stalingrad in order to win the war.

Accordingly, the question that needs to be asked anew is the relative moral weight to be given to the lives of each of these *four* groups (as opposed to the two groups, civilians and combatants). Certainly, by the light of these principles, the least moral weight is to be accorded to the lives of enemy combatants and the greatest to the lives of civilians. Indeed, it is precisely the lives of enemy combatants that one's own combatants are trying to take. That said, and notwithstanding the possible moral justification for the strategy of degrading the numbers of enemy combatants (i.e., killing as many as possible relative to the military end in question), presumably, one should not kill[54] more enemy combatants than is necessary to win the war. What of civilians' lives? Evidently, greater moral weight should be accorded to the lives of one's own civilians than to the lives of enemy civilians. After all, one's own civilians are the group one's combatants are fighting for.[55]

The distinction between intentions and foreseen consequences can be invoked to justify foreseen but unintended killing of enemy civilians (assuming the quantum of these civilian deaths is not disproportionate to the military objective). However, it would be far more problematic to invoke it in the case where the lives of one's own civilians are at stake; as, for example, in a case where an armed force is seeking to retake its own city currently occupied by an enemy force and contemplating to retake it by bombing enemy positions foreseeably killing some of its own citizens in the process. Examples of this situation include the Russian assaults on Grozny between 1995 and 2001, where

54 We note that in the Western, 'Clauswitzian', understanding the object of fighting is said to be to render the opponent unable to resist, or to break their will, rather than to kill. In the close quarters of urban fighting, the level of injury that must be inflicted to guarantee ending a threat is practically indistinguishable from that to kill.

55 For discussion of these issues see Seumas Miller *Terrorism and Counter-terrorism: Ethics and Liberal Democracy* (Blackwell 2009) Chapter 5

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many ethnic Russians were living in the city. Another more recent example was in Marawi where the Philippine military objective was to liberate the city from the control of ISIS aligned militants, but in order to do so had to accept risk to its own civilians trapped or held captive in the city.

Some theorists have gone further than this moral distinction between enemy civilians and one's own civilians and argued that one's own combatants ought to be accorded greater moral weight than enemy civilians.[56] This move is inconsistent with the laws of war as they are standardly interpreted and, in any case, should be resisted on moral grounds, although one must be careful to insist that the civilians in question are genuine civilians and are not participating in the hostilities, as often happens in the case of terrorists and insurgents. There are also complications arising from civilians who assist combatants qua combatants. However, we set aside these complications here.

Let us grant that combatants have a special duty to protect the lives of their fellow citizens, and that they do not have this duty in respect of noncitizens (or, at least, in respect of persons who are not under the effective control of the state). Moreover, let us assume that there is an important difference between combatants and civilians in relation to this duty. Specifically, combatants have an institutionally based moral duty to put themselves in harm's way – indeed, to risk their own lives – in order to protect the lives of their fellow citizens and, in particular, their own civilians. Obviously, enemy civilians do not have either of these duties.

Now consider the following two options confronting combatants operating in enemy territory. They can intentionally fire a rocket into a building known to house enemy combatants, and thereby intentionally put the lives of (innocent) enemy civilians, including children who attend an adjoining kindergarten, in harm's way (i.e., there is a reasonable chance that some of these innocent children will be killed). Alternatively, they can send in a group of their combatants to storm the building and kill the enemy combatants by using small arms at close range. The latter option puts one's own combatants in harm's way, since there is a reasonable chance that some of them will be killed by the enemy combatants. On the other hand, the lives of the innocent children will not be put at risk. According to the view that privileges the lives of one's own combatants over the lives of enemy (innocent) civilians, it is morally permissible, perhaps even morally obligatory, to intentionally put the lives of innocent children in harm's way in order to avoid putting one's own combatants in harm's

56 Asa Kasher and Amos Yadlin 'Military Ethics of Fighting' (2005) 4, 5 *Journal of Military Ethics* 20. See Miller (n 55).

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way. This conclusion is strongly counterintuitive since it permits one's own combatants to cause innocent children to be put in harm's way in order to preserve the lives of one' own combatants and, importantly, to do so when there is no military necessity to do so; after all, the military objective, let us assume, will be achieved whichever option is chosen.

Thus far, we have considered the question of the moral weight to be accorded to (enemy and own) combatants and (enemy and own) civilians in theatres of war, such moral weighing being a necessary condition for the understanding and application of the principles of discrimination, necessity, proportionality and precaution from a moral (as opposed to purely legal) standpoint. The theatres of war in which these principles are to be applied in this paper are urban areas and, in particular, they are to inform decisions whether: (1) to use mortars, artillery fired at high angles, air- delivered munitions and the like (thereby causing relatively high civilian casualties but suffering relatively low casualties among one's own combatants), or; (2) to eschew these 'blunt instruments' and rely much more heavily on the use small arms (often at close range) under restricted rule of engagement (thereby, causing relatively low civilians casualties but suffering relatively high casualties among one's own combatants). We have not sought to answer these questions one way or another. Indeed, we are not sure there is any a priori set of answers; it all depends, so to speak, on the numbers in given contexts. However, we have indicated in general terms what the relative weights to be accorded to civilian versus combatant lives ought to be in making such decisions. Specifically, we have argued for a more fine-grained, fourfold, set of applicable distinctions than the strictly legal interpretations might admit, notably the distinction between the greater moral weight to be accorded to the lives of one's own civilians versus those of enemy civilians, and the distinction between disproportionate loss of civilian lives and disproportionate loss of (at least one's own) combatant lives (e.g., relative to victory in battle and relative to enemy civilian lives).

Thus far, our focus of the application of the *jus in bello* principles in urban areas has been on the use of mortars, artillery fired at high angles, air delivered munitions and the like, versus the use small arms (often at close range) under restricted rule of engagement. However, the use in urban areas of flamethrowers and other weapons that cause unnecessary suffering to enemy combatants (in particular) raises a somewhat different set of issues, although our fourfold taxonomy of own and enemy civilians and own and enemy combatants remains relevant. The argument for the use of such weapons is that they reduce loss of civilian lives relative to the use of mortars, artillery fired at high angles, air delivered munitions and the like but, in addition – and unlike the use of small arms under restricted rules of engagement – they also reduce

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the casualties of one's own combatants. It is, apparently, a win-win situation. Unfortunately, however, they do cause unnecessary suffering, in particular, to enemy combatants, e.g., they burn them alive.

Here we need to return to first principles and, in particular, the doctrine of the moral equality of combatants. The moral equality of combatants implies, let us assume, that combatants have the moral (and legal) right to kill (or try to kill or some such) enemy combatants and, in turn, they have waived their right that enemy combatants not kill (or try to kill or some such) them. However, obviously combatants retain many of their moral rights. For instance, combatants have a moral (and legal) right not to be tortured and, therefore, combatants do not have a moral (or legal) right to torture other combatants. Torture consists in large part in the infliction of extreme suffering, and the deliberate infliction of extreme suffering is self-evidently a pro tanto morally wrong.[57] Although it is a pro tanto moral wrong it is conceivable that it could be overridden under certain circumstances. However, torture is typically regarded as an absolute, or near absolute, moral wrong, i.e., it cannot be overridden (other than perhaps in an extreme emergency but not, in any case, in general in theatres of war).

Clearly, the use of flame throwers consists in large part in the infliction of extreme suffering. Moreover, whereas it might be necessary to kill an enemy combatant it is presumably not necessary to torture him to death or, specifically, to burn him alive. Arguably, therefore, the use of flame throwers to kill enemy combatants by burning them alive crosses the moral threshold of permissible suffering i.e., it violates the principle of unnecessary suffering of enemy combatants by virtue in part of the extremely high degree of suffering inflicted (in conjunction with the availability of other lethal methods which involve much less suffering). We note that the argument here rests in part on the degree (as opposed to quantum) of suffering and, as such, is not necessarily overridden by a larger quantum of some good, e.g. a greater number of lives saved by use of a flamethrower than by some other available method that involves much less suffering, e.g. a bullet.

We note here that one needs to consider the use of flamethrowers and the like not only from the perspective of the user but also from that of its target, bearing in mind that if one side in a war can use flamethrowers so, presumably, can the other side. Perhaps, other things being equal, a combatant would prefer to use a flamethrower rather than a gun, given it is more effective in clearing a

57 See Seumas Miller 'Is Torture Ever Morally Justifiable' (2005) 19, 2 *International Journal of Applied Philosophy* 179–192.

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room occupied by an enemy combatant waiting to ambush him (and it reduces civilian casualties). However, other things might not be equal; specifically, the other side might also have flamethrowers. So, the question becomes: Would a combatant prefer to have the advantage provided by flamethrowers, if he knows the enemy has the same advantage and, therefore, he himself could be burned alive rather than merely shot dead? One suspects the answer to this question is in the negative. The issue is more complicated than this since, for instance, there might be the option of surrender. However, this does not alter the fundamental argument, given the actual use, rather than merely the threatened use, of flamethrowers is what is under consideration. Of course, the argument in favour of flamethrowers also rests on the reduction in civilian deaths. However, combatants, while they might reasonably and justifiably be asked to increase their risk of death from bullets in order to reduce civilian casualties, perhaps they cannot reasonably and justifiably *also* be asked to risk being burned to death in order to reduce civilian casualties, especially if the civilians in question are enemy civilians.

This argument against flamethrowers and like weapons that cause unnecessary suffering should not be confused with an argument used in favour of limiting the use of particular weapons that is based on the general (and worthy) goal of reducing overall suffering and, in particular, unnecessary suffering in war (including, but certainly not restricted to, the suffering of combatants). Doubtless, other things being equal, it is a morally worthy aim to try to get belligerents to sign up to conventions that limit the use of weapon types to those that cause the least suffering. However, this argument in favour of reducing weapons that cause unnecessary suffering might fail in the face of an argument in favour of a lethal weapon that causes unnecessary suffering but reduces very considerably the number, not only of civilian lives lost, but also of combatants' lives lost (including, if the claims about the use of flamethrowers in WWII are valid, the number of enemy combatants' lives lost).

5 Conclusion

In this paper we have argued that urban warfare poses an acute moral dilemma with real world consequences. Harm to civilians in war is increasing exponentially with wide-area explosive weapons heavily implicated. On the one hand, there is an array of weapons that are effective, on the other hand these weapons are either very costly in terms of civilian lives and destruction or, in the case of flamethrowers for instance, they cause unnecessary suffering to combatants. Is there a way out of this dilemma and, importantly for contemporary

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ethical debate, what are the implications for emerging technologies, especially issues of autonomous lethality?

Earlier we examined some of the weaponry that might square the circle, at least in part and in some circumstances.

- Direct fire explosive weapons: The destruction or demolition of buildings or parts of buildings by directly fired and substantial explosive munitions compares generally presents less risk to civilians than the use of air delivered or indirectly fired explosive munitions to achieve the similar effect. However, few militaries still maintain specialised armoured vehicles or systems suitable for this.
- Non-lethal chemical weapons: As explained earlier, the use of chemical weapons is only legal within law enforcement context. Thus, we have a moral quandary. We can modify, or cease to observe the chemical weapons convention, which many humanitarian organisations and governments would likely regard as regressive, but in doing so might dramatically reduce the number of civilians harmed in urban combat if the adversary does not have access to appropriate protection.
- Some obscurants: Obscuring smokes degrade the enemy's capacity to kill with direct fire and when used for this purpose are legal and offer substantial tactical advantage to forces that have respirators and imaging equipment that allows them to see in the smoke when the adversary cannot. There are risks to civilians present from asphyxiation or toxicity, but these will be far lower than if high explosive munitions are used.
- Bulldozers and like machinery: The use of bulldozers or equivalent machinery to destroy buildings or parts of buildings from which there is resistance reduces the chance of lethal and damaging effects beyond the target area even more than with explosive weapons. Furthermore, the relatively slow process of demolition is likely to give civilians scope to flee. Thus, militarily it ought to be an attractive option.

Armies might choose to introduce various combinations of the capabilities listed to achieve military objectives in urban areas while reducing the use of wide area explosive weapons. Such assessment should consider what robotics and autonomous systems offers, both tactically and in terms of ethical advantage. The use of human-controlled Un-Crewed Ground Vehicles (UGV) to deliver the above effects reduces risks to troops and can consequently be expected to allow a more deliberate and potentially discriminate approach. UGV may also have a deterrent effect since they deny an enemy a human target. In principle therefore, robotic and autonomous approaches might provide an ethical pathway to what might usefully be called 'less unacceptable' conduct of urban warfare.

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Inevitably, this proposition encounters the major ethical issue of autonomy in lethal systems. Here we will not attempt to address this vexed question, but we do seek to highlight that the urban warfare dilemma we have described is highly relevant to autonomous systems in an urban fight.

For example, let us imagine an autonomous device that enters a building and, once inside, discriminates between combatants and non-combatants, killing the former but not the latter. The ethical challenges are profound. Our position is that in principle such a device should not, we suggest, be fully autonomous since there should be a human on-the-loop, as opposed to in-the-loop or out-of-the-loop, i.e., the human operator should have the capacity to shut down the device.[58] However, we recognise this approach may be insufficiently sophisticated, if accelerating technical advances makes human control problematic because the device operates faster than human reaction. These are the issues that many colleagues are wrestling with.

We suggest that ethical analysis of robotic and autonomous systems should compare their use in urban areas with the current default employment of explosive area weapons and system use to augment or replace the capabilities described above. We also suggest that further ethical examination of questions of the relationship between degree of harm (suffering) and quantum of harm (suffering), along the lines of the theoretical flamethrower dilemma we have described above, may be useful in the lethal autonomy discussion.

The ethical challenges of fighting in populated urban are substantial and cannot satisfactorily be addressed without considering the interests of all parties. Requiring or expecting troops to continue to suffer high levels of casualties in order to minimise civilian harm has historically proved unsustainable in war. It may also be inimical to the discipline which protects such civilians. It is not in question that a soldier may be required to accept risk to protect civilians, rather that the threshold of morally acceptable demands on a soldier in the context of urban war deserves more attention, especially if the soldier has not been given tools to reduce the risk. There is a clear ethical argument for capabilities that might reduce civilian casualties from wide area effect explosive weapons: what are the 'least worst' options for the urban fight?

58 See Seumas Miller 'Autonomous Weapons, Terminator-Esqu Software Design' in Hank W. Prunckun (ed) *Cyber Weaponry: Issues and Implications of Digital Arms* (Springer 2018) 157–169.

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CHAPTER 8

Preventing another Mosul

Unmanned Weapon Platforms as the Solution to the Tragedy of a Hostage Siege

Maciek Zajac

Summary

Using the 2016–17 assault on Mosul as a case study, the article argues that current urban warfare tactics do not allow an attacker to liberate a city without destroying it if facing a determined opponent willing to completely disregard IHL. This is unacceptable and has to be addressed. The only currently feasible way to successfully do so is deploying attritable warbots in large numbers to allow overwhelming the defenders without the use of explosives-based weapons. Some such warbots may need to operate autonomously. This shows that autonomous weapons may constitute a morally superior alternative even in morally complex urban environments.

Keywords

urban warfare – autonomous weapon systems – killer robots – siege warfare – military robotics – *jus in bello*

1 Introduction[1]

The 2016–17 Iraqi offensive that recaptured the city of Mosul from the Islamic State have demonstrated the inability of contemporary armed forces to retake urban areas from a determined and ruthless enemy without either suffering debilitating casualties or causing thousands of civilian deaths and virtually destroying the city itself. The enemy's willingness to refuse civilian evacuation via a humanitarian corridor and effectively take the inhabitants hostage is all

1 Research for this chapter was funded by the National Science Centre, Poland; Project No. 2018/29/N/HS1/01867.

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it takes to impose this tragic dilemma on an attacking force. The civilian death toll of the battle of Mosul alone is estimated to have reached between seven and forty thousand, with almost one million people internally displaced and large portions of the city levelled. Avoiding another such tragedy should be a priority for all practitioners and theorists of urban warfare, especially as the barbarous yet highly effective tactics employed by the Islamic State are likely to be copied not only by other jihadist movements but by other armed groups and rogue states caring little for the lives of civilians and their own rank-and-file combatants. The use of such tactics constitutes a most serious challenge both to the broad ethical program of reducing the cruelty of war and *de facto* implementation of the international Laws of Armed Conflict (LOAC) and to the way of war based on mobility, informational supremacy and the use of precision fires. Confronting and defeating this challenge may be the most important task for ethics, theory and practice of urban combat in the coming decade. Armed forces of countries committed to sustaining and improving the present levels of compliance with LOAC and the *jus in bello* principles that underlay it should pay particular attention to this issue.

In this chapter I will argue that the only viable way of escaping the hostage siege dilemma, that is, enabling the blue force to retake the city without causing itself and/or the city's inhabitants to suffer extensive and possibly prohibitive casualties consists of incorporating very large numbers of unmanned and autonomous weapon systems into the blue force structure and using these to substitute for artillery and aerial fires presently being used to overpower urban defenders. While other measures may be used to marginally improve the outcome of hostage sieges,[2] only the automatization of the assault can dramatically change the calculus and in result either discourage rogue actors from creating hostage siege dilemmas in the first place or, if they do so, defeat them decisively while suffering unequivocally proportional casualties.

I will proceed as follows: first, I will provide an account of the 2016–17 Iraqi assault on Mosul, giving special attention to the events and features relevant to the hostage siege dilemma; I will use this case study to introduce the theoretical concept of the hostile siege and the ethical dilemma it creates, discussing possible objections in the process; I will then make the case that the circumstances of the Battle of Mosul are far from unique and are bound to repeatedly transpire in the future. The relatively frequent occurrence of hostage sieges in turn generates a duty to find a way out of the dilemma, as I will

2 While the term 'hostage city assault' would describe Mosul-like scenarios with more fidelity, it seems to me to do a worse job of communicating its meaning without further explanation, and therefore I will settle for 'hostage siege' as a more convenient label.

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argue next, defeating several objections to this claim. Finally, I will try to convince the Reader that widespread use of unmanned and autonomous weapon platforms constitutes a viable way of assaulting hostage cities in a manner that assures respect for the *jus in bello* principles, proposing several ways in which such weapons may be designed and used to drastically limit both military and civilian casualties. Concluding that it may be not only permissible but morally required to employ autonomous weapons in the circumstances of the hostage siege, I finish the chapter discussing the implications of such a conclusion for a wider debate concerning moral feasibility of autonomous weapons.

2 Battle of Mosul – a Hostage Siege Story

In June 2014, the jihadist group styling itself the Islamic State of Iraq and Syria (ISIS)[3] stunned the world by taking over the city of Mosul. The group's conquests, though extremely rapid and surprising, run out of steam at the edges of Shia-dominated part of Iraq and, once stalled, became a target of slow but meticulous rollback operations by the Iraqi government and its varied coalition of allies. Tikrit, Ramadi, Fallujah and approximately half of Daesh-conquered territories were retaken prior to the assault on Mosul. These operations were widely viewed as a build-up to the climactic battle, allowing Iraqis to develop urban combat capabilities and test themselves in much smaller battles before advancing onto a truly large urban target. Their success, coupled with the raising and retraining of sufficient number of troops by the anti-ISIS coalition, made it possible for the assault on Mosul to begin in October 2016.

During a three years long occupation of the city and the adjacent region the Islamic State committed all kinds of atrocities, up to and including a revival of slavery[4] and an attempted and partially realized genocide against the Yazidis and other ethnic and religious minorities.[5] While ISIS' crimes are both well-known and well documented,[6] it is important to notice that from

3 The group has been known in the Islamic world primarily as Daesh (from the letters of the Araba acronym of the name). I will use both names as well as a shorter term 'Islamic State' interchangeably throughout the paper.

4 Samar El-Masri, 'Prosecuting ISIS for the sexual slavery of the Yazidi women and girls' 22(8) *International Journal of Human Rights* (2018).

5 Valeria Cetorelli and others, 'Mortality and kidnapping estimates for the Yazidi population in the area of Mount Sinjar, Iraq, in August 2014: A retrospective household survey' (2017) 14(5) *PLoS Medicine*.

6 United Nations Assistance Mission for Iraq, 'A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL' (Report) (August 2016)

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the perspective of this particular armed group these violations were not mere means to an end, but an end in itself. Daesh did not kill, torture, rape and enslave its victims just to gain and sustain power. Permanent denial of basic human rights to all persons living under its regime was inherent in its goal of creating a state based on a strictly fundamentalist interpretation of Islam. This is exemplified *in extremis* by the institutionalization of sexual slavery within the group's bureaucracy and with explicit reference to, justification by and guidance from Islamic law and jurisprudence, as ISIS interpreted it:

> Two of these departments [of Daesh bureaucracy – M.Z.] were the Department of Slaves, which supervised the slave trade and the treatment of the enslaved, and the Islamic State's Research and Fatwa Department, whose responsibility was to issue religious guidelines dealing with women slaves. In fact, the latter issued two manuals for slavers, published in December 2014 and January 2015, respectively. These manuals regarded captured girls or women as 'merely property' that can be inherited as part of the owner's estate, and considered sexual intercourse with them 'halal' (accepted by God), with a few restrictions to avoid incest and to determine the 'nasab' (the identity of the father) of the resulting offspring. In addition, ISIS-run Islamic courts had a role to play in this process, through notarising the official sales contracts between the sellers and the buyers[7]

Thus, the cause ISIS was fighting for was intrinsically and irredeemably wrong, the methods it was using, the grievances it was claiming to answer and the flawed legitimacy of its many enemies notwithstanding (not that it could mount a convincing argument regarding these issues). The people it had conquered were its direct and primary victims, and the Iraqi effort to reclaim lost territory was not only a sovereign state's attempt to assert its territorial integrity, but also a humanitarian intervention.

Clear understanding of this fact is essential for correctly picturing the proportionality issues bearing on the Iraqi commanders. Leaving the city in the hands of the Islamic State for a period of time meant nothing less but accepting that for such a period of time the human rights of all its inhabitants will remain completely unprotected, and that their violations will be both frequent

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<https://www.ohchr.org/Documents/Countries/IQ/UNAMIReport12Aug2016_en.pdf accessed> 6 July 2020; Amnesty International, 'At Any Cost: The Civilian Catastrophe in West Mosul, Iraq' (Report) (11 July 2017) AI Index MDE 14/6610/2017.

7 El Masri (n 4) 6–7.

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and extreme. Moreover, as the enemy's willingness to defend the capital of their self-proclaimed caliphate was openly and convincingly declared, little was to be gained by delaying the assault. ISIS made it clear they would never leave Mosul unless evicted by military force. Launching the assault as soon as it was militarily feasible was thus preferable, from a humanitarian viewpoint, to delaying it any further.

Upon beginning the assault in October 2016, the Iraqi leadership made a strategic decision not to encourage civilian flight out of Mosul. After their experiences fighting ISIS in the previous two years, the Iraqis could have been under no illusion that the city would fall swiftly or without heavy fighting, especially as Mosul was being treated as a decisive, no-retreat battle by ISIS itself, an attitude clearly communicated in Daesh propaganda. It is important to stress that the Iraqi government did not prevent any of the inhabitants from leaving Mosul – all refugees were accepted within Kurdish and Iraqi lines, and no open or veiled threats aiming to discourage people from leaving Mosul have been issued.[8] Yet the fact remains that the inhabitants were advised against leaving by the Iraqi authorities. I do not know whether the principle motivation for this policy was the realization that the government had no resources to deal with one million refugees with winter approaching, a desire to shelter the population of Mosul from ISIS retaliation that might follow an attempted exodus (and that ultimately followed later attempts at flight), a conviction that as the battle approached their particular neighbourhoods, the people should be able to get to the Iraqi lines in manageable numbers, or simple negligence. Whichever combination of reasons motivated it, the policy itself seems in hindsight dubious, if not outright disastrous. At the time, it was a judgment call, though perhaps one made too lightly and with too little informed deliberation.

The government's advice was one of the reasons for the Moslawis deciding to stay in their homes in large numbers as the assault was launched, though probably not – in most cases – a decisive one. The Islamic State deployed

8 It might be argued that the government alliance with the Shia militias responsible for a campaign of ethnic cleansing aimed at Iraqi Sunnis in the 2006–2008 period engendered somewhat reasonable fear of being subject to similar atrocities in the Sunni population of Mosul (especially in men of military age); it is certain that Daesh tried to capitalize on such fears and used them as a tool for making Moslawis stay. However, the 2016 Iraqi government may be said to have allied with the militias out of genuine necessity in the face of an existential threat, not out of freely expressed preference; I therefore believe it should not be considered culpable for the ill effects that such an alliance have indirectly produced. It definitely cannot be asserted that the use of the militias in rather marginal roles during the assault constituted a veiled threat directed at Mosul's population and aimed at keeping them in the city – proving such an assertion would require strong evidence that has not surfaced.

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the full force of its apparatus of coercion to keep the inhabitants from fleeing. Attempts to flee the city, if discovered, were punished by death, though in the final stages of the battle, as it was trying to exfiltrate many of its fighters, Daesh consciously allowed some of the refugee outflow as it served as cover for its operatives.[9] The diligence and competence with which these orders were executed at various stages of the battle notwithstanding, it was official Daesh policy to keep civilians from leaving by force. It goes without saying that the consent of the local population for turning Mosul into a besieged fortress was not asked for, and was never given.

Other reasons – fear of losing their homes and other possessions in the chaos of war, fear of the conditions prevalent in refugee camps, attachment to their hometown – might have enticed many locals to stay, but the threat of punishment made by ISIS was on its own enough to coerce a reasonable person.

Initial efforts aimed at the reoccupation of the eastern part of the city were not characterized by the extremely heavy and sometimes indiscriminate use of fires that was to become one of the defining features of the assault's latter stages. Spearheaded by the separately raised and commanded Counter-Terrorism Service troops, the initial assault relied on softer infantry-based tactics and took ground successfully, albeit with unsustainably large losses.[10] The Counter-Terrorism Service did not have enough troops to continue in this way, and other Iraqi units were unwilling or unable (perhaps both) to apply these tactics. Consequently, a historically typical reversion to the use of heavy fires motivated by desire to lower own casualty rates transferred a large amount of risk away from the Iraqi units and onto the civilian population and the physical infrastructure of the city itself.[11] This new policy was enabled by the Obama administration relaxing the rules of engagement guiding the use of American firepower in Mosul in December 2016. While these heavy fires, especially those provided by the American, British, French and other Western allies, were mostly used against specific points of resistance within a city, later

9 This, of course, was also a war crime, as it endangered fleeing civilians and made them, at the very least, subject to thorough and definitely unpleasant status verification process. Men of military age were routinely separated from their families as a result, sometimes for prolonged periods.

10 According to some sources (Amnesty International, 11) the total casualty numbers for CTS units may have exceeded 50%, entirely plausible in the case of infantry units attacking in dense urban terrain, especially as these troops faced ISIS defenders at the latter's peak capacity, when Daesh were not yet attrited by the fighting and rigors of the siege, and capable of bold counterattacks (Spencer 2020).

11 Amnesty International (n 6) 11.

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into the battle some of the Iraqi units, especially the Iraqi police, were documented firing indiscriminately into the city and/or using inherently indiscriminate weapons such as Multiple Launch Rocket Systems or Improvised Rocket Assisted Munitions (IRAMS).[12]

The Western allies alone claim to have released twenty-nine thousand munitions within the city in the October 2016 – June 2017 period.[13] This number does not account for organic Iraqi fires, nor for the seven hundred car bombs used by ISIS, nor for any other fires or Improvised Explosive Devices used by the terrorist group.

The Islamic State understood that the coalition air supremacy and absolute superiority in artillery would, if unchecked, result in its defeat; it responded by using civilians as human shields, increasing the death toll from air and artillery strikes but failing to deter the Coalition from using these heavy-handed tactics. As described by an Amnesty International report:

> Beginning in October 2016, IS rounded up thousands of civilians in contested villages and neighbourhoods and forced them to move directly into zones of conflict in west Mosul. This systematic campaign of forced displacement allowed IS to use an ever-greater number of civilians as human shields as their territory contracted. The armed group then prevented civilians from evacuating, in some cases trapping them inside their homes by welding their doors shut or by rigging the entrances with booby traps. IS also summarily killed hundreds, if not thousands, of men, women and children as they attempted to flee and hanged their bodies in public areas.[14]

Another factor may have contributed to the exceptional intensity of fighting in Mosul. The Trump administration, taking office in January 2017, vowed to toughen the American approach towards the Islamic State. These political pronouncements were in line with a strategic approach favoured by the incoming US Secretary of Defense, retired general Jim Mattis. The approach, known as the 'battle of annihilation' called for surrounding and destroying ISIS forces, including within cities, rather than allowing them to retreat in order to avoid

12 Ibid. 12, 26; Air Wars, 'Death in the city: High levels of civilian harm in modern warfare resulting from significant explosive weapon use' (Report) (May 2018) <https://airwars.org/wp-content/uploads/2018/05/Airwars-Death-in-the-City-web.pdf> accessed 6 July 2020, 6.

13 Air Wars, ibid. 6.

14 Amnesty International (n 6) 5.

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urban combat, as Australian general John Noble claims had happened in Fallujah.[15] 'Our intention is that the foreign fighters do not survive the fight to return home to North Africa, to Europe, to America, to Asia, to Africa. We're not going to allow them to do so', Mattis stated in a CBS interview in May 2017.[16] While it is unclear whether American influence over the Iraqi leadership was substantial enough at the time to influence decisions of this magnitude, Mattis and other American officials appeared satisfied that the annihilation strategy was being put into place, and there is no evidence of attempts to induce ISIS to leave Mosul without a fight, although such an approach was part of the Iraqi playbook at the time.

It would be deeply unfair to say that the battle of Mosul was won just through the use of overwhelming firepower. Great sacrifices and growing military prowess of the Iraqi troops, especially of the Counter-Terrorism Service (the elite service branch created and trained to bypass the disfunction of the regular army); improvements in tactics and operations made by the Iraqi commanders as the assault progressed; technological superiority of the Coalition – these and many other factors contributed to the outcome of the battle. Yet there is no denying that it was the substantial use of heavy fires that enabled the Iraqis to advance into the ISIS stronghold without suffering unsustainable casualties, and so having to suspend or abandon the assault.

These fires were, unsurprisingly, the main driver of civilian casualties attributable to the Coalition. The initial civilian casualty estimates provided by Iraqi and Coalition authorities were quite low – Iraqi prime minister Haidar al-Abadi have provided the media with a figure of twelve hundred sixty civilian dead. Later an Associated Press examination of various tallies, including of the data collected by the Mosul morgues, rendered a figure of nine to eleven thousand civilian dead, with morgue records identifying nine thousand six hundred six civilian fatalities.[17] Of this number a third were counted as victims of the Islamic State, another third as fallen in the Coalition bombardment, with the final third of deaths unattributed to the operations of a specific actor. A much higher figure of forty thousand civilian dead has been put forward

15 J Spencer, 'Fighting ISIS in the City – Interview with Major General John Noble' (Podcast Interview for Urban Warfare Project Podcast, Modern War Institute at West Point) (West Point NY May 15 2020), <https://mwi.usma.edu/fighting-isis-city/> accessed 6 July 2020.

16 K Watson, 'Fight against ISIS has shifted to 'annihilation tactics', Mattis says' *CBS News* (New York 28 May 2017) <https://www.cbsnews.com/news/fight-against-isis-has-shifted-to-annihilation-tactics-mattis-says/> accessed 6 July 2020.

17 S George, 'Mosul is a Graveyard: Final IS Battle Kills 9,000 Civilians' *AP News* (New York 21 December 2017) <https://apnews.com/bbea7094fb954838a2fdc11278d65460> accessed 6 July 2020.

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by Kurdish intelligence and constitutes the high-end estimate of the civilian casualties.[18] The very fact that this figure remains within the realm of possibility and cannot be dismissed as implausible demonstrates the character of the fighting and the levels of uncertainty involved. Still, as it is a decisive outlier, for the purposes of this paper I will treat the more clearly established number of roughly ten thousand civilian casualties as currently available best estimate.

Despite the use of tactics aimed at reducing military losses, the Iraqi forces still suffered fourteen hundred killed in action and seven thousand wounded,[19] markedly exceeding the worst annual casualties suffered by US forces in the Iraq War. The city itself, especially its more densely populated western part, has suffered World War II levels of devastation. Most of its remaining population was internally displaced; according to a report by the World Bank Group, 65% of the city's housing units were either partially or completely destroyed.[20] The historically significant Old Town was one of the hardest hit districts, with the demolition of the famous Al-Nuri Mosque, one of the last acts performed by ISIS fighters, becoming a symbol of the group's wanton destruction. The city's reconstruction has since been plagued by mismanagement and corruption on top of obvious challenges involved;[21] in July 2020 it is still far from completion.

3 Hostage Siege Scenarios – a Problem, the Problem or No Problem?

Ethics of war require the defender of a besieged city to allow the evacuation of all civilians who wish to be evacuated, without retaliating against them in any manner; they also require the besieging force to grant them safe passage – a

18 P Cockburn, 'The massacre of Mosul: 40,000 feared dead in battle to take back city from Isis as scale of civilian casualties revealed' *Independent* (London 19 July 2017),https://web.archive.org/web/20170719234812/http://www.independent.co.uk/news/world/middle-east/mosul-massacre-battle-isis-iraq-city-civilian-casualties-killed-deaths-fighting-forces-islamic-state-a7848781.html> accessed 6 July 2020.

19 H Cooper, 'Revived After Mosul, Iraqi Forces Prepare to Battle ISIS in Tal Afar' *New York Times* (New York 18 August 2017) https://www.nytimes.com/2017/08/18/world/middleeast/iraq-tal-afar-isis-battle.html accessed 6 July 2020.

20 World Bank Group, 'Iraq Reconstruction & Investment Part 2: Damage and Needs Assessment of Affected Governorates' (World Bank Publication) (January 2018) <http://documents1.worldbank.org/curated/en/600181520000498420/pdf/123631-REVISED-Iraq-Reconstruction-and-Investment-Part-2-Damage-and-Needs-Assessment-of-Affected-Governorates.pdf> accessed 6 July 2020, 17.

21 J Davison 'No plan for Mosul: chaos and neglect slow Iraqi city's recovery' *Reuters* (London 4 February 2019) <https://www.reuters.com/article/us-iraq-mosul/no-plan-for-mosul-chaos-and-neglect-slow-iraqi-citys-recovery-idUSKCN1PT0JV> accessed 6 July 2020.

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humanitarian corridor – into the territory unaffected by fighting and do their best to provide for their basic needs while they remain displaced by the fighting and resultant destruction. The civilians are allowed a choice and means to effect it, not an outcome – those who refuse a proper offer of evacuation lose their right to immunity from attack, and so an assault may commence without constituting indiscriminatory violence.[22] These simple requirements stream from basic principles of *jus in bello* – distinction, proportionality and precaution in attack. Such an ideal scenario is the realization of any ethical commander's dream – a battlefield with no civilians to worry about. A siege – one of the most static forms of warfare – is one of the few that allows the willing to realize such a dream.

Yet it almost never is so, as it is very rare for both sides to genuinely care for the civilians' well-being and for one side not to be (dis)advantaged by such an ethically desirable outcome. Historically, it was the danger of the attacker refusing the civilian evacuation in order to place a greater burden on the defender's resources that had to be addressed by the ethics of war. Nowadays, the prospect of the defender refusing to let the willing civilians go while simultaneously denying them access to essentials and/or subjecting them to widespread human rights violations has, as I will argue, become more threatening.

The conundrum is game theoretical in nature, and arises if the following conditions are met:

1) The defender of an urban area places little or no value on the lives and wellbeing of the city's civilian inhabitants, while the attacker does so
2) The defender does not fear or mind sanctions for breaking the Laws of Armed Conflict
3) The inhabitants have little or no means of resisting the defender's abuses themselves
4) The defender does not answer to a politically superior entity that, if forced or convinced to do so, has the authority to make it surrender

If these conditions obtain jointly, the defender has every incentive to turn the city's inhabitants into human shields who will either starve if the attacker settles for a static siege,[23] or be subjected to the attacker's fires if he decides to

22 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (4th edn, Basic Books 2006) 160–170.

23 It is an interesting legal question whether the attacker who offered free passage to civilians, which offer they could not accept because of defender's coercion, would be permitted to then take the city by starvation under the Laws of Armed Conflict. However, since any such attempt would most probably cost much more civilian deaths than an assault, it would be prohibited anyway as a clearly more harmful option, and so the legality of the move needs not to concern us here.

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take the city by storm. The attacker thus faces a choice of either initiating a battle that will result in mass civilian casualties or abandoning the effort to reclaim the city.[24] Such a choice becomes morally tragic if the attacker is a just warrior and retaking the particular city is for her not only a political, but also a moral goal. Given that only a morally vile defender would take an entire city hostage, and that such an action itself clearly demonstrates that the defending regime is capable of, and aiming at, widespread and grievous human rights abuses, retaking a hostage city will almost always constitute a moral goal of very substantial importance.[25]

The attacker's dilemma may take a soft or a hard form. If the civilian casualties to be expected from the assault are regrettably high, yet not high enough to render the assault disproportionate, the attacking commander is dealing with a soft problem. If she takes all necessary precautions in attack, she is just choosing the least bad of the available options. Her choice is heartbreaking and tragic, but morally correct. In the case of the harder problem, she is forced to abandon her design of liberating the city, as the expected civilian casualties would be so large as to render the effort disproportional. This possibility is especially disturbing since it offers rogue actors such as ISIS means to run roughshod over the human rights of large populations and perpetuate their ability to do so by threatening even larger breaches if someone intervenes. Such dynamic is already in play in the case of nuclear dictatorships – no matter what these actors perpetrate upon the populations under their control, all armed humanitarian intervention, carrying with it the risk of nuclear war, is obviously disproportional and thus morally impossible. The Hostage City Dilemma in its hard form replicates this on a smaller scale, and makes this kind of effective moral blackmail available to every actor who can gather a couple thousand fighters armed with Kalashnikovs.

I do not believe the occasional occurrence of the soft dilemma can be successfully challenged. As to the hard dilemma, the case of Mosul could actually be used to argue that it almost never occurs – or that it is relatively common. If one believes that the outcome of the assault on Mosul, as known to us in hindsight, was proportional, then it is possible to argue that few if any urban assaults undertaken without gratuitous destruction will ever be disproportional. After all, ISIS – one of the most notoriously immoral actors of the post- Cold War era – did its best to increase the civilian casualties through

24 The third possible choice, that of avoiding the use of heavy fires and consequently failing to liberate the city while suffering debilitating casualties and still causing some civilian ones is Pareto dominated by the former two.

25 Brian Orend, *The Morality of War* (Broadview Press, 2013) 34–43, 54–56.

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human shield use, was aided in this enterprise by at least some indiscriminate fires on the Coalition part, then directly targeted thousands of civilians and managed to produce a civilian death rate of one percent (four percent, if the worst estimates are to be believed). No own-casualty-averse assault, especially conducted with greater ethical competence (no IRAMS, no delayed signature strikes) could, according to this logic, do much worse, and most could do better.

On the other hand, if one considers Mosul disproportionate in hindsight (does the answer depend on which casualty estimate is believed?), then one should assert that the hard dilemma could in fact be quite common, both in the sense of the absolute frequency of its occurrence and in terms of a proportion of urban battles in which it occurs. Consider that, while fierce and competent, ISIS fighters were for the most part self-taught amateurs, with some of them being slave or child soldiers. What if they were professionals, and better equipped? What if they were more numerous, which could well have been the case, if ISIS did not bleed itself with hyperaggressive attacks in battles such as Kobane? The proportionality calculus is, moreover, affected not only by the casualty figures, but also by the moral worthiness of a goal constituted by liberation, which is itself affected by the moral character of the defending regime, defined as the scope of human rights violations it perpetrates. Again, it is hard to be morally worse than ISIS in our day and age. What if the hostage siege was undertaken not against Daesh, but, say, the Russian-backed separatists in Eastern Ukraine? Escaping life under Islamic State to live under contemporary Iraqi government may be worth a 1% chance of dying; is escaping life in the 'New Russia' to live under contemporary Ukrainian state worth a 5% chance of dying? If not, then imposition of such a risk on a hostage population would be disproportional.

Whether the hard dilemma is rather common or negligibly rare seems to me a decently interesting topic of academic disputation, but settling the issue is not essential for the point I am trying to make. Certainly, if the hard dilemma is common, than solving the Hostage Siege Problem is more important than if it were not common. But I believe the issue carries sufficient importance even if only the soft dilemma occurs in real life. I have stated that the soft dilemma's existence is not to be challenged, in the sense that tactics required for conquering competent and determined opposition in an urban environment necessarily generate very substantial civilian losses under the conditions of a hostage siege. Yet it is nonetheless worth anticipating two plausible, if ultimately unconvincing, ways of defusing the dilemma.

The first way consists of asserting that many specific efforts may be undertaken to marginally improve the outcome of hostage sieges, jointly resulting in lowering civilian casualties to the acceptable – or at least routinely

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accepted – level. More precise munitions may be used, and dumb munitions entirely eliminated; scope and intensity of surveillance extended even further in order to gather even more intel on the current location of civilians. More and better trained troops may always be used; civilians may be proactively aided in their escape from the hostage city, and cared for even better afterwards. Finally, an even better effort to convince the enemy not to stay and fight in the city may be undertaken.

The theory that it is the violations and the imperfections, rather than the core tactics of the assault-by-heavy-fires that cause most civilian casualties is convenient to believe in; this is one reason for which I do not believe it, but there are several other. For one, the frontline Coalition airstrikes in the Battle of Mosul were ultimately effective and quite numerous, and we know that ISIS used human shields on the frontlines, and that the hundreds of thousands of civilians who did escape the city escaped through the frontlines. It stretches credulity to assume high civilian casualties would not occur in such environment. Moreover, a third of casualties registered by the Associated Press could not be attributed by the local witnesses to the actions of either party, which means that these deaths most probably happened on the frontlines, in the zone where both parties simultaneously used fires. These could not be the effect of inherently indiscriminate weapons, as these would not be used in close proximity to own troops, at least not routinely.

The final piece of evidence that convinces me that this empirical hypothesis is not true comes from the examination of Amnesty International's post-Mosul recommendations for actions to be taken by Coalition militaries in order to lower the civilian death toll.[26] Of the six measures proposed, only one – eschewing the use of inherently indiscriminate weapons such as IRAMS in densely populated areas – is an ethical no-brainer. Another – eschewing all artillery – is demanding and may be infeasible for countries that do not possess a world-class air force (assuming present-day level of technological advancement). Complying with IHL's targeting requirements and 'assuming the presence of civilians in all structures' was undertaken throughout the battle, with room for improvement, but at an unprecedented level of excellence, at least as far as Western forces were concerned.[27] The remaining two – safely evacuating civilians when feasible and providing civilians with advanced warnings and guidance on escape routes – are made impossible by the very nature of the Defender's repressions that defines the Hostile Siege Problem. In short,

26 Amnesty International (n 6) 46.

27 Spencer (n 15).

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there is not much room for improvement by picking the low-hanging fruit of minimally decent conduct. Moral saints, if made to use this kind of fires in a densely packed hostage city, would still bury entire families under the rubble of their own houses with depressing frequency. There is no easy fix, not within the airstrikes-and-artillery paradigm.

The second challenge to be addressed is the issue of culpability for the civilian deaths. The Defender is clearly culpable for these, in more than one way. Does this not solve the problem? These deaths, morally, are terrorist murders – and so the whole thing is just an act of terrorism writ large. We do not blame addressees of terrorist threats for the deaths that occur when these threats are ignored, especially if fulfilling the terrorists' demands would mean doing substantial harm to innocents – as would the Attacker do, were it to abandon the inhabitants of a hostage city, leaving them in the hands of the rights-violating Defender regime. Why should we blame the Attacker then for the casualties of the Hostage Siege?

I am more than willing to assert the ultimate, yet also direct, culpability of the Defender for each and every death that happens during the assault.[28] Yet Defender's culpability is ultimately for the moral problem at hand. Both ethics and law obviously require the Defender to quit its illegal and tyrannical occupation of the city. In addition to its *jus ad bellum* culpability, the Defender has an obvious *in bello* culpability for the civilians being there at all at the time of the assault and for them being in locations used for military purposes during the assault. This makes any direct comparisons between the number of civilians who die as a result of the Defender's repressions or its use of fires with the number of civilians who died as a result of the Attacker's fires absolutely misguided, if not morally obscene. Yet it does not eliminate the moral problem of the civilian death toll, nor does it excuse the Attacker for causing avoidable civilian casualties. The fact the terrorists taking hostages are ultimately responsible for each and every death that occurs during the intervention of a SWAT team does not excuse the counterterrorism team officers for rushing into ill-advised action resulting in avoidable deaths. The situation is surely no different when the hostage group is the population of a large city. Thus, the Attacker cannot simply state 'it is not us who shed this blood' as long as they do not deliberately target civilians. The list of their *in bello* responsibilities is far longer, and their obligation to actively try to preserve lives, instead of just avoiding culpability for these deaths, is much more profound.

28 With the exception of instances, if there were such, when civilians were deliberately and directly targeted by the attacker's forces.

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The Hostage City scenarios are also non-trivially different from another scenario that I will dub None Left Behind ones – the difference being more significant at the level of actual military and political practice than from a viewpoint of pure ethics. In Hostage City scenario, the military necessity of using heavy fires combined with the presence of civilians will mean that before a certain neighbourhood may be secured by the Attacker, a certain percentage of its civilian inhabitants will die as unintended yet foreseen victims of the Attacker's air- and artillery strikes. In None Left Behind scenario, the Defender will execute a certain percentage of a neighbourhood's inhabitants upon being forced out of it – an action clearly and credibly communicated, and therefore foreseen, by the Attacker. The civilian death toll in both scenarios will be identical – but the Attacker's control over the outcome will not. In Hostage City Scenarios the Attacker is free to develop new tactics and technologies that, when applied, will lower the death toll; in None Left Behind, the death toll stays the same regardless of such developments. As the Attacker in the Hostage City scenarios may improve the outcome, it is morally obliged to try.

Realizing this difference could lead one to a depressing conclusion that if the efforts of the Attacker to lower the civilian death toll through novel solutions succeed in a Hostage City scenario, the Defender, insensitive as it is to the value of human life, will simply switch into the None Left Behind mode. This does not take into account, however, that this would significantly diminish the Defender's deterring power vis-a-vis a certain kind of Attacker – a kind that might have been represented by at least some members of the anti-ISIS Coalition. Such an Attacker – let us call it a clean hands Attacker – does not really care about the civilian lives, but cares about the culpability for their deaths not being assigned to it, its moral reputation being important for the overall legitimacy of the war effort.[29] It would thus be deterred by human shield civilians dying in its airstrikes, as this might tarnish its image; but civilians being murdered by its opponents just because clean hands Attacker was on the brink of liberating them is not a deterrent – it is a gift to its propaganda machine, a golden opportunity for showcasing moral contrast. Given the growing importance of narrative-shaping efforts for present day military campaigns (and awareness thereof), it is hard not to see this difference between being forced to cause unintended deaths and these deaths being directly committed by the Defender.

29 I am assuming that the clean hands Attacker does not believe it can deceive others about its actions, at least not perfectly.

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In summary – the conditions constitutive of a Hostage City dilemma may be said to have applied in a number of historical urban battles. The assaults on Mosul and Raqqa provide the most recent examples; yet these are far from being historically unique. One need only to think of Manila, or of Hue, to appreciate the diversity of possible ideological backgrounds that may lead the Defender to create them. These conditions differ, in a morally and politically significant way, from those created by the Defender's use of purely terrorist tactics against the inhabitants – unlike the latter, they leave the Attacker with space for improvement, and so with responsibility to attempt such improvement.

Hostage City scenarios may be created relatively easily – military control of a city, lack of moral scruple and lack of incentive to do otherwise suffice – but they cannot be easily escaped, not through basic levels of IHL compliance. Whether it is equally easy for the Defender to bind the Attacker in a hard version of this dilemma, making the attack itself disproportional, is subject to discussion; regardless of this both ethicist or practitioners should research the possibility of a paradigm shift enabling the latter to significantly lower civilian casualties in Hostage City scenarios.

4 The Unmanned Solution

Restating the Hostage City dilemma: the city must be taken. The use of potent munitions – taking the city with shells, bombs and missiles – causes unacceptable civilian casualties. But the use of other tactics – taking the city with bullets and bayonets – generates too many military casualties and consequently jeopardizes the assault's success.

The two possible ways of escaping the problem are lowering the civilian casualties resulting from heavy fires – as indicate above, most probably an impossible task – or lowering the military casualties resulting from less fires-heavy tactics. If the Attackers lower their attrition rate to acceptable levels, they can go on clearing house by house and street by street with small arms fire without there being a problem.

The obvious solution is a thorough and far-reaching robotization of the assault force. Unmanned platforms do not have intrinsic moral value, can be replaced or repaired far easier than humans, and their destruction, even on a massive scale, does not result in institution-wide loss of expertise and competence. Unlike most air- or artillery delivered munitions, they may be scaled to remain proportional to effects not only in the ethical, but also in the economic sense. Sure, robots are expensive, especially before their production becomes subject to the economics of scale; but intelligent munitions delivered by

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fighter aircraft (themselves AI-driven robots of a very specific type) are expensive as well. Their logistical footprint may also be lower than that of artillery, and almost certainly lower than that of the high-end air platforms.

In short, there are many good moral and non-moral reasons to pursue such technologies even outside the specific context of Hostage Sieges or urban combat,[30] and, once they reach an appropriate level of maturity, to introduce them into urban combat in the role of first-through-the-door combatants and providers of close fire support. In fact, the case for robotization of these tasks is so strong that advocating for it in an academic publication may be considered trivial. Still, there are several reasons for which it is not so, and these are worth exploring.

The first one is obvious in the context of this article. Until the Hostage Siege dilemma will be recognized as a serious and urgent problem of both military ethics and military theory, the effort to conceptualize and subsequently create tactics and specialized units capable of applying unmanned technologies to urban combat will not materialize. It should be understood, and I do not think it has already been understood widely enough, that the roboticization of infantry units capable of urban warfare is no less urgent, and perhaps more so, as that of other, traditionally more technologically forward formations. This is especially so because the urban environment is especially cluttered and so one of the toughest to conquer for robotic platforms. If no special theoretical pressure is applied to the efforts in this area, there is a risk it will receive less attention and fewer resources than work on easier domains, even though breakthroughs in these domains are not as urgent from an ethical perspective.

Unless the 'unmanning' of urban combat is thought of as a single project oriented upon a specific result – being able the take Hostage Cities without unacceptable civilian losses – there is also a danger that technologies and tactics will be introduced piecemeal and without achieving full synergy between them, or that truly novel tactics, such as these described by Major 'Jay' Hurst,[31] will be introduced with a large yet avoidable delay. The dramatic change in urban tactics and its moral benefits will best be realized through shifting the whole paradigm of urban combat, and such a shift requires solid ethical justification and theoretical grounding.

30 Ronald Arkin, *Governing lethal behavior in autonomous robots* (CRC Press 2009); BJ Strawser, 'Moral predators: The duty to employ uninhabited aerial vehicles' (2010) (4) *Journal of Military Ethics*.

31 Jules Hurst, 'Robotic swarms in offensive maneuver' (2017) 87(4) *Joint Force Q*; Jules Hurst, 'Small Unmanned Aerial Systems and Tactical Air Control' (2019) 33(1) *Air & Space Power J*.

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Last but not least, the elephant in the room – the issue of retaining meaningful human control over the robots. There are reasons to think that established human-in-the-loop ways of controlling robots in urban combat may not be robust and/or resilient enough to do the job. Communication signals may be lost in the urban labyrinth or be jammed by a technologically competent enemy. If these challenges may be overcome – or rather if they kept being overcome in the constant arms race against jamming methods of various kinds – then everything is fine, at least till the next cycle of technological development. But if they are not, than unmanned platforms would need to be given a certain level of autonomy, including autonomy to select and engage human targets with lethal force.

Doing this is, however, anathema to certain ethicists[32] and organizations,[33] who decry weapons capable of lethal autonomy as inherently indiscriminate and worthy of a pre-emptive ban, not only on use, but also on research into such weapons. Yet it is precisely the example of a Hostage Siege that makes one realize that in some contexts, all weapons being used are being used out of military necessity in an indiscriminate manner. Even if autonomous weapons were to be incapable of any kind of discrimination – a contestable proposition – they would not be more so than a 500-pound bomb, but the harm they effected would be much more limited. In fact, a robot consisting of a tracked platform with a machine gun mounted on top of it, a common unmanned-ground-vehicle design, would be capable of killing all the occupants of a given building, but not of collapsing the building itself. At the very least, its use instead of a bomb would preserve the housing unit and enable the retrieval and identification of corpses, a matter significant for both the issues of accountability and for its human (and oftentimes religious) dimension. This, of course, assuming that the robot would be uncapable of even very simple forms of discrimination, such as child-adult or armed-unarmed person, which stretches credulity.

Thus, the project of replacing the use of heavy bombardment with weapons and tactics based on unmanned technologies is, despite its obvious merits, not ethically uncontroversial, or at least not without ethical work to be done. Despite this, it constitutes the best prospective solution to the Hostile Siege

32 Peter Asaro, 'On banning autonomous weapon systems: human rights, automation, and the dehumanization of lethal decision-making' (2012) 94(866) *Intl Rev of the Red Cross*; Robert Sparrow, 'Robots and respect: Assessing the case against autonomous weapon systems' 30(1) *Ethics & Intl Affairs*.

33 Human Rights Watch, 'Heed the Call: A Moral and Legal Imperative to Ban Killer Robots' (Report) (August 2018) <https://www.hrw.org/sites/default/files/report_pdf/arms0818_web.pdf> accessed 6 July 2020.

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dilemma, a solution that deserves the attention of ethicists, engineers and military thinkers alike. The required level of attention is not yet present. I believe we owe it to the memory of the fallen Moslawis to bring it about.

5 Conclusion

One cannot dismiss the tragedy of a hostage siege as a product of highly unlikely circumstances. Neither can one decry its outcome as a product of preventable moral failings of Attackers who should better apply current tactics. Shifting all blame for the civilian death toll onto the Defender will also not do – as long as we have the moral opportunity to lower civilian casualties, our duty to do so is independent of issues of culpability.

While state-of-the-art weapons and tactics are, when skillfully employed, capable of alleviating the problem to a certain degree, they cannot bring civilian casualties and physical destruction down to a level that would enable the blue force to liberate the city without destroying it. This will be true as long as artillery and air-delivered munitions of considerable yield will remain the primary means of decisively engaging the enemy. The level of precision adequate to a hostage situation that obtains in a non-evacuated city can be achieved only if the enemy is engaged primarily with miniaturized warheads, small arms fire and non-lethal weapons. Attacking with these relatively precise means incurs prohibitive casualties – unless the most dangerous frontline positions in urban combat are automated. Employing drones and partially or even fully autonomous robots as a spearhead of an urban assault constitutes a way out of the dilemma and is fully warranted morally in such tragic conditions. These expendable platforms would lower both civilian and military casualties and allow a greater number of enemy combatants the possibility to surrender or to be rendered *hors de combat* without dying. Taking into account the costs of taking cities 'by airstrike' and the price of the subsequent reconstruction efforts, such a solution may even prove cost-effective in financial terms.

This case study of the battle of Mosul and its implications for the use of semi- and fully-autonomous robots in warfare also point to an alternative framework for discussing the moral and legal feasibility of autonomous weapons. Instead of trying to discuss these weapons as a general class, experts should look at their application in specific contexts and scenarios and decide their feasibility for each scenario separately. Such an approach could breach the divide between enthusiasts and opponents and allow autonomous weapons to be rendered into a force for making war more humane and less destructive.

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CHAPTER 9

Can the Robots Save the City?

Ethics, Urban Warfare, and Autonomous Weapons

Jenna Allen and Deane-Peter Baker

Summary

This chapter aims to explore the ethical tensions between the objections raised against the use of lethal autonomous weapons generally and the potential of lethal autonomous weapons to mitigate some of the key challenges of urban warfare. Our argument originates from the premise that the ethics of war is an ongoing negotiation between recognizing the necessity of war and minimising the destructiveness of war. If this is true then we argue that the ethics of using lethal autonomous weapons in urban warfare cannot be appropriately weighed without the ability to have a reasonable sense of what operational impact they are likely to have. To generate an understanding of this operational impact, the UNSW Canberra Future Operations Research Group conducted an experiment using a wargame-based methodology. We present the potential merit of wargaming as a tool for applied ethics research and go on to describe the project and outline its findings. We contend that these findings represent a significant contribution to this debate.

Keywords

lethal autonomous weapons – urban warfare – experimental wargaming – future warfare – ethics of war – moral liability

1 Introduction[1]

In the opening statement of the International Committee of the Red Cross report, *I saw my city die: Voices from the front lines of urban conflict in Iraq, Syria*

1 The authors would like to acknowledge, with thanks, the important contributions Dr Charles Knight made to this opening section.

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and Yemen, historian Anthony Beevoir declares that '[w]ar is back in cities'.[2] As Alice Hills' excellent study in *Future War in Cities*[3] made very clear over a decade ago, the primary challenge of urban warfare is that cities present more – and more varied – risks than any other environment on the planet: risks to combatants, risks to civilians on the urban battlefield, and risks to the urban infrastructure on which communities, commerce, and essential services depend. These tactical and operational risks carry with them inherent legal and ethical risks, which together combine to form the strategic risk that governments will fail to achieve their objectives when they resort to the use of military force in cities.

Urbanisation and demographics dictate that the future of war is in cities[4] and that the vast majority of casualties will continue to be civilians.[5] Data from 2010 to 2015 shows that approximately half of all global war-related casualties occurred in Iraq, Syria and Yemen.[6] A three-year study of civilian casualties in Syria and Iraq showed that five times more civilians were killed in cities than in rural areas.[7] Understandably, states that take seriously their legal and ethical responsibilities to minimise harm to non-combatants balk at the prospect of fighting on urban terrain. Influential US commentators have echoed historical patterns and questioned the need for special efforts related to populations – arguing that '*it is not in our National Interest to enter cities'* or '*we can evacuate civilians'*.[8] But simply declaring 'we don't do urban' is unlikely to be a realistic option going forward. The fact that liberal states typically balk at this human cost only encourages asymmetric adversaries to fight in urban spaces where liberal sensibilities prevent the full power of modern weapons from being applied. Operational research modelling mirrors reality and demonstrates how norms of restraint provide incentives for adversaries.[9]

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2 International Committee of the Red Cross, *I Saw my City Die: Voices from the Front Lines of Urban Conflict in Iraq, Syria and Yemen* (ICRC 2017).

3 Alice Hills, *Future War in Cities: Rethinking the Liberal Dilemma* (Routledge 2004).

4 Michael Evans, 'Lethal Genes: The Urban Military Imperative and Western Strategy in the Early Twenty-First Century' (2009) 32, 4 *Journal of Strategic Studies* 527; David Kilcullen, *Out of the mountains: The coming age of urban guerrilla* (OUP 2013).

5 ICRC (n 2) 2.

6 *Ibid.* 12.

7 Stephanie Nebehay, 'Urban warfare takes heavy civilian toll in Syria, Iraq, Yemen: ICRC' (*Reuters,* 14 June 2017) https://www.reuters.com/article/us-mideast-crisis-redcross-idUSKBN1952QT.

8 John Spencer, *So you think that Army can avoid fighting in Megacities* (Modern War Institute 2017).

9 Edward Kaplan, Moshe Kress, Roberto Szechtman, 'Confronting Entrenched Insurgents' (2010) 58, 2 *Operations Research* 329.

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By the turn of the century the four demographic megatrends foreshadowing an urban future for war that were identified in David Kilcullen's influential book *Out of the Mountains: The Coming Era of the Urban Guerrilla* were already evident: rapid population growth; accelerating urbanization; littoralization (a tendency for populations to cluster on coastlines); and increased connectedness.[10] A plethora of studies have argued for the need to develop new approaches, but militaries have instead pursued their preferred vision of the 'high-tech' manoeuvre forces[11] that was vindicated in the 1991 war to liberate Kuwait from Iraqi occupation. No less a figure than U.S. Army Chief of Staff Gen. Mark Milley has acknowledged 'with a high degree of confidence' that 'the American Army is probably going to be fighting in urban areas' and that this is problematic given that the US Army 'has been designed, manned, trained and equipped for the last 241 years to operate primarily in rural areas'.[12] The same is true of America's allies. As a consequence, very little progress has been made on addressing the immense normative (legal and ethical) challenges posed by operations in urban terrain.

Arguably the biggest challenge for law-and-ethics-abiding military forces is that the standoff firepower that provides such advantage in warfighting on rural terrain is less effective or even counterproductive in urban areas. Even the employment of precision weapons has not resolved the challenge. As urban warfare expert John Spencer points out, 'In the 2017 Battle of Mosul, the U.S. military supporting Iraqi ground forces nearly depleted their entire precision guided munitions stockpile attempting to precisely strike enemy positions. The enemy within the buildings often were in fact not destroyed because of the protection of the structure, or simply moved by underground tunnels to an adjacent building which was then the next target to be targeted for destruction'.[13]

Can military operations on urban terrain still succeed if a prohibition on the use of explosive weapons in cities or urban areas is brought into effect?[14] One possibility is that some or all of the standoff engagement capability provided

10 Kilcullen (n 5).

11 Lawrence Freedman, *The future of war: A history* (Penguin 2017) 190.

12 Michelle Tan, 'Army Chief: Soldiers Must be Ready to Fight in Megacities' (*Defense News*, 5 October 2016).

13 Jeff Daniels, 'ISIS fight shows US military can use lower-cost weapons with lethal results' (*CNBC,* 19 July 2017) https://www.cnbc.com/2017/07/19/isis-fight-shows-us-can-use-lower-cost-weapons-with-lethal-results.html.

14 Thomas Ayres, 'The Use of Explosives in Cities: A Grim but Lawful Reality of War' (2017) 87 *Joint Forces Quarterly* 26–30; Ellen Nohle and Isabel Robinson, 'War in cities: the "reverberating effects" of explosive weapons' (*Humanitarian Law and Policy,* 2 March 2017).

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by explosive weapons such as artillery and aerial bombing might be replaced by autonomous weapons systems. The potential ability of such systems to operate within and around urban structures – rather than destroying them – while keeping human operators at a safe distance, seems to show significant promise as a means to fight *in* the city without *destroying* the city (urbicide). Autonomous weapons are, however, controversial. The ICRC summarises the debate over the ethics of lethal autonomous weapons (LAWS) as follows:

> The primary argument for these weapons has been an assertion that they might enable better respect for both international law and human ethical values by enabling greater precision and reliability than weapon systems controlled directly by humans, and therefore would result in less adverse humanitarian consequences for civilians. … Another ethical argument that has been made for autonomous weapon systems is that they help fulfil the duty of militaries to protect their soldiers by removing them from harm's way. … Ethical arguments against autonomous weapon systems can generally be divided into two forms: objections based on the limits of technology to function within legal constraints and ethical norms; and ethical objections that are independent of technological capability. (ICRC 2018, p. 8–9)[15]

The latter set of objections include the question of whether the use of autonomous weapons might lead to 'a responsibility gap where humans cannot uphold their moral responsibility', whether their use would undermine 'the human dignity of those combatants who are targeted, and of civilians who are put at risk of death and injury as a consequence of attacks on legitimate military targets', and the possibility that 'further increasing human distancing – physically and psychologically – from the battlefield' could increase 'existing asymmetries'[16] and make 'the use of violence easier or less controlled'.[17] In its 2021 position paper on autonomous weapons, the ICRC further articulated these concerns stating that the 'interrelated loss of human agency, moral responsibility and human dignity in life-and-death decisions' apply to all AWS that

15 ICRC, 'Ethics and autonomous weapon systems: An ethical basis for human control?' (*ICRC,* 3 April 2018) 8–9.

16 It is not obvious to me why this is an ethical issue. I am reminded of Conrad Crane's memorable opening to a paper 'There are two ways of waging war, asymmetric and stupid'. Conrad Crane, *The Lure of Strike* (2013) 43, 2 *Parameters* 5. It doesn't seem to me to a requirement of ethics that combatants 'fight stupid'.

17 ICRC (n 15) 9, note 16.

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endanger human beings.[18] The concerns become 'most acute' when AWS are 'designed or used to target persons directly' since this would 'facilitate death and injury' by reducing human life 'to sensor data and machine processing', undermining and dehumanising a 'shared sense of humanity' and restraint in conflict.[19]

The risk of harm, escalation and challenges for compliance with international law, according to the ICRC, stems from the unpredictable nature of AWS.[20] Even supporters of autonomous weapons often caution that these systems should only be employed in circumstances of 'boxed autonomy' – that is, their autonomous functioning should be confined to environments where there is little likelihood that they will encounter non-combatants (for example in sub-surface combat operations). Operations in dense urban areas represent the other extreme – in many cases autonomous systems will be more likely to encounter non-combatants than combatants, a scenario where their perceived unpredictability presents an increased possibility for errors causing undue harm.

In this chapter we explore the ethical tension between, on the one hand, the potential of lethal autonomous weapons to reduce the destructiveness and high proportion of non-combatant deaths that are currently features of urban warfare and, on the other, the ethical objections which have been raised against the use of lethal autonomous weapons in general. We argue that if the ethics of war is (as we believe) an ongoing negotiation between recognizing the necessity of war, on the one hand, and minimising the destructiveness of war, on the other, then we cannot appropriately weigh this question without having a reasonable sense of just what operational impact lethal autonomous weapons are likely to have in urban warfare. We go on to describe a wargame-based experimental methodology that was employed by the UNSW Canberra Future Operations Research Group to generate an understanding of this operational impact, and we outline the core relevant findings that emerged from that project. While we do not claim that these findings on their own definitively settle the question at hand, we contend that they represent a significant contribution to this debate.

18 ICRC, 'ICRC position on autonomous weapon systems' (*ICRC,* May 2021) 2 – 8.

19 *Ibid.* 8.

20 *Ibid.* 2.

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2 'War Is Terrible, War Is Necessary'

As summarised above, the arguments against using lethal autonomous weapons vary. However, at their core is an uneasiness with the underlying moral compromise that military ethics often requires. There has been a well-established normative shift to individual rights-based morality that puts a premium on the right to individual life and results in self-defence being the only reason for use of force by states or 'belligerents' that is perceived as legitimate.[21] In this chapter paper we take the view that the ethics of war should not be treated as normatively 'pure'. Instead, the appropriate starting point is from the conclusion that war is indeed terrible but is also sometimes necessary to achieve just ends, and therefore the ethics of war should be viewed as a form of principled pragmatism. The proper and rigorous application of military ethics as a negotiated compromise acknowledges the truth of the dark and brutal reality of warfare and facilitates pragmatic constraints to the conduct of war when it *is* necessary. Such pragmatism, as Valerie Morkevicius skilfully argues in her book *Realist ethics: just war traditions as power politics*, is essential for correcting the drift in contemporary thinking that relies on an optimism and, at the systemic level, lacks realism about the 'way that wars are fought and won', and leads to unrealistic expectations.[22]

This thought is supported by legal scholar Janina Dill who introduces the idea of three 'logics' of waging war – 'sufficiency', 'efficiency' and 'moral liability' – that conceptualise the different ways the 'harm and destruction that waging war inevitably causes' are distributed and justified in contemporary warfare.[23] As Dill explains, the logic of sufficiency is the attempt of international humanitarian law to allow legitimate warfare but restrict harm to only what is deemed sufficient to achieve a 'general military victory'.[24] It limits what targets can be legitimately engaged in war to only what directly contributes to an enemy's military effort in a conventional sense and attempts to wear down an adversary to secure narrowly defined military victory. The logic of efficiency, on the other hand, focuses on distributing harm to achieve ultimate strategic goals, which are often political, through the most effective means available and necessary. An important distinction made by Dill is that the logic of efficiency occurs on a spectrum from a more maximal willingness to distribute harm against any target 'whose attack

21 Janina Dill, 'The 21st Century Belligerent's Trilemma' (2015) 26, 1 *European Journal of International Law* 105.

22 Valerie Morkevicius, *Realist ethics: just war tradition as power politics* (CUP 2018) 225.

23 Dill (n 21) 83.

24 *Ibid.* 90.

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brings the quickest victory' to broadening what is considered 'military objectives' in a way that detaches military operations and law from the inefficient sequencing and containment burdens of the sufficiency logic.[25] Ultimately, this logic seeks to 'minimize combatant and possibly even civilian losses by getting a war over with as quickly as possible'.[26] Finally, the logic of moral liability in Dill's conception relies on distributing harm in warfare based on whether or not an individual is deemed liable to be legitimately targeted by a potentially lethal attack. This reinforces the norms that try to force 'zero-casualty' warfare in which the only normatively accepted exception is now violence perpetrated in self-defence 'if she is (i) responsible for (ii) contributing to (iii) an unjustified threat and (iv) a lethal attack is a proportionate and necessary response to the contribution'.[27] As Dill summarises:

> International law demands belligerents follow the logic of sufficiency. Contemporary strategic imperatives, to the contrary, put a premium on waging war efficiently. Cross-culturally shared expectations of proper state conduct, however, mean killing in war ought to fit the logic of moral liability. The latter proves entirely impracticable. Hence, a belligerent faces a choice: (i) renounce the right and capacity to use large-scale collective force in order to meet public expectations of morally appropriate state conduct (logic of liability); (ii) defy those expectations as well as international law and follow strategic imperatives (logic of efficiency) and (iii) follow international law (logic of sufficiency), which is inefficient and will be perceived as illegitimate.[28]

This paper does not attempt to resolve the debate put forward above. However, it is useful to acknowledge the underlying tensions between the three logics and their impact on the current ethical arguments about how and why harm is allocated and justified in contemporary warfare. Importantly for the topic of lethal autonomous weapons, Dill highlights the well-established normative shift to individual-rights-based morality that has put an increased premium on the right to individual life and resulted in the use of force by states only being perceived as morally legitimate when it is employed in self-defence since World War II. Seeking legitimacy, Dill argues that liberal states have reacted by continuing to increase attempts to manage liability in line

25 *Ibid.* 93.
26 *Ibid.* 100.
27 *Ibid.* 105–106.
28 *Ibid.* 83.

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with these norms.[29] Although this seems like what we should hope for, attempts to constrain warfare without weighing this impulse against other considerations often creates more ethical issues than it solves in the increasingly complex landscape of contemporary warfare.

Focusing solely on 'moral liability' (and in so doing disallowing any harm to those who are not liable) as the basis for how and why harm should be distributed in warfare risks slipping into contingent pacifism. When followed through to their logical end, both sufficiency and moral liability seek to sanitize warfare into something that liberal orders find normatively comfortable. However, in the increasingly urbanised and connected theatres of war that this paper discussed previously, the result of these two logics of war is much more likely to be prolonged harm or the inability to use force at all – both of which are unsatisfactory or unrealistic outcomes. As already stated, it is our view that the Just War Tradition, rather than being a normatively 'pure' approach to the ethics of war, has long been a negotiated compromise between the need to allow wars to be fought for just causes, on the one hand, and the desire to minimise the harms of war on the other. If that is correct, then it is clear that both the logic of 'efficiency' should be weighed into the question of lethal autonomous weapons along with the potential impact of these weapons on issues of liability must be considered.

3 The Value and Constraints of Experimental Wargaming

Try as we might to harness the power of war for our own ends, warfare is unpredictable and warfighting experimental by nature. It is crucial, therefore, to engage in activities that help us to challenge our assumptions, reflect on our conclusions and clarify our thinking. This process ideally occurs before action is required. However, according to a UN report, what might have been the first strike by an autonomous weapon against a human target took place in Libya in March 2020.[30] If the report is correct then the age of autonomous warfare has begun. Even so, the lack of significant levels of operational employment of these systems makes weighing the logic of efficiency (as we have argued is morally necessary) in the debate over the ethics of lethal autonomous weapons

29 *Ibid.* 105.

30 UNSC Final report of the panel of experts on Libya established pursuant to Security Council resolution 1973 of 2011 (8 March 2021).

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difficult. Consequently, our best available source of information to evaluate the operational effects of employing autonomous weapons is experimental data.

Recent work by Benjamin Schechter, Jacquelyn Schneider and Rachael Shaffer focuses on the use of experimental wargaming as a methodology that provides 'new opportunities for wargames to answer broader questions about decision-making, crisis behaviours, and patterns of outcomes'.[31] Authors argue that experimentation methodology should prioritize internal validity – such as 'the focus on iteration, control, and generalizability within experimental design'[32] – before external validity in order to be able to 'draw confident causal conclusions from the research'.[33] As a wargame is admittedly an abstraction of the experiment of warfare itself, there is no doubt enormous value in external validation to solidify and test conclusions formed from an experimental wargame. However, especially when dealing with capabilities and concepts that do not yet exist, experimental wargaming with proper internal validity can hold important and needed insights. External validity then follows 'to delineate the extent to which these conclusions can generalize', clarifying 'what process should be explored in the real world'.[34]

The conclusion reached for the purposes of this paper is that the nascent developmental stage of lethal autonomous weapons should not preclude us from utilising experimental wargames that are 'being proven as a promising new tool for both the social science and the wargaming communities' to 'answer broader questions about decision-making, crisis behaviours, and patterns of outcomes'.[35] To that end, in March 2021 a team of researchers from UNSW Canberra, working alongside experts on future warfare and wargaming from North America, Europe and Australia, led what seems – given a preliminary literature search – to have been a world first wargame experiment primarily focused on ethics. Indeed, the fact that wargames centering on questions of ethics are seen as valuable is evidence of the current struggle many western liberal democracies face to balance the normative preference for logics of

31 Benjamin Schechter, Jacqueline Schneider and Rachel Shaffer, 'Wargaming as a Methodology: The International Crisis Wargame and Experimental Wargaming' (2021) 52, 4 *Simulation & Gaming* 513.

32 *Ibid.* 515.

33 Arthur Schram, 'Artificiality: The tension between internal and external validity in economic experiments' (2005) 12, 2 *Journal of Economic Methodology* 225–237.

34 Rose McDermott, 'Internal and External Validity' in James N. Druckman, Donald P. Greene, James H. Kuklinski and Arthur Lupia (eds) *Handbook of Experimental Political Science* (CUP 2011) 28.

35 Schechter et all (n 32) 514.

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sufficiency and moral liability with the logic of efficiency as the most morally acceptable approach to warfare.

4 A Wargame Experiment

4.1 *Design*

Aligned with the previous discussion in this chapter, the wargaming environment deliberately reflected what is arguably the most ethically challenging operational environment for ground forces – a densely populated urban terrain. The team employed a matrix wargaming methodology to evaluate the operational effects and ethically relevant outcomes arising from the potential future (2035) employment of lethal autonomous weapons (LAWS).[36] The Matrix Wargame approach was adopted to seek an understanding of the potential operational impacts of autonomous systems for a future Australian Defence Forces (ADF) force and to consider this in the light of normative arguments for banning or tightly regulating lethal autonomous weapons, especially with regard to considerations of liability.

The Matrix Wargame was chosen for the research project as it was the most applicable methodology available for understanding the impact of systems that do not yet exist or are not yet in service, and so cannot be evaluated through 'live' experimentation. The wargame employed a primarily *discovery* methodology that emphasises creativity by maximising opportunities to think about and discuss operations in the urban/urban littoral environment using future autonomous capabilities and varying ethical considerations. The wargame did not provide causal evidence nor test hypotheses in a rigorously controlled environment.

To evaluate the operational and ethical challenges and opportunities of using robotic and autonomous systems in an urban environment, the design team created a futuristic – (2035 timeframe) – scenario and five vignettes which included counterinsurgency, counterterrorism, humanitarian assistance and disaster relief, and offensive and defensive operations against a near peer/peer future adversary. The vignettes provided a basis for the Blue team to plan courses of actions which were then played out in the matrix wargame

36 What follows in this section is drawn from the draft report on the wargaming experiment, which was produced with input from all of the core participants of the activity. Particular credit goes to Gordon Pendleton who coordinated synthesising of those inputs into the report, and to Andy Atkinson who took primary responsibility for data capture and analysis.

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using current and future Australian Defence Force capabilities. In each serial, one key variable was changed, either a combat capability variable (e.g., adding autonomous weapons to the Blue team's order of battle – the opposition Red force had these systems from the outset), or else a normative variable (adjusting the ethical constraints affecting Blue team's decision-making).

4.2 *Aim*

The research was aimed at providing a clearer understanding of the ethical challenges and opportunities of using autonomous systems in future multi-domain joint urban operation. The objectives of the wargame were:

- To assess the operational impact resulting from the integration of current and future autonomous systems, without additional normative constraints to ADF urban operations.
- To assess the operational impact arising from the addition of specialised urban warfare equipment to future ADF urban operations.
- To identify the operational impact that a proposed 'enhanced' ethical framework for urban warfare will have on future ADF urban operations.
- To identify the key weaknesses in capability across the Doctrine, Organization, Training, Material, Leadership, Personnel, Facilities, Interoperability framework.

4.3 *Key Findings*

A bespoke data capture and analysis plan designed for the wargame focussed player considerations to generate data and findings directly related to the overall aim and objectives. This included the identification of capability gaps against a modified Defence Capability Framework, the Defence Lines of Development, in addition to the capture of ideas for future concepts and ethical challenges. The key observations of most relevance to this chapter were:

- *Graduated Autonomy.* At the end of the first (low intensity) vignette the Blue Team indicated that while they would have found unmanned systems useful, they would not have found any additional value in having fully autonomous systems. This suggests that future forces will prefer semi-autonomous ('man on the loop') systems where circumstances allow. However, later vignettes showed that there will be circumstances, particularly in high intensity combat operations, where fully autonomous systems will be extremely valuable. Multiple semi-Autonomous Systems were employed during the wargame, as were Autonomous Systems.
- *Autonomy Impact on Target Value*. It was noted throughout the vignettes that the higher value targets (from a Red perspective) were those that had an identified human element. This emphasises that while autonomous systems

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are ideally placed to undertake tasks seen as 'dangerous and or dirty'; the corollary is that as they become more prolific, this will increase the target value of manned systems and nodes. Similarly, the use of unmanned logistics aircraft in Vignette 2 served as a disincentive to Red to target those aircraft, due to a perceived reduction in the advantage to be gained militarily and in terms of influence. Killing humans remained central to political success, whether because killing mere machines in some circumstances had less impact, or whether because avoiding killing non-combatants was key for political legitimacy or, above all, because killing is the ultimate imposition of will. In discussion there seemed to be a consensus that the final decisive fight is either humans on humans or Autonomous Systems on humans. On a few occasions in the experimentation Red made tactical and operational decisions based on the use of Autonomous Systems against either humans or other automated systems. Factors within these decisions ranged from tactical effectiveness, endurance, capability and, (for the first time for the experienced Red team wargamers), the difference in Informational benefit of striking a system or versus a human. This choice was less concerned with tactical effectiveness and more with the informational/strategic benefits of impacting Blue force's human capability, as it was deemed more 'newsworthy' within the resultant Information Operation, had a greater morale impact against Blue if losses were incurred caused by Red's Autonomous Systems, and had a greater impact on Blue's operational capability as humans were deemed finite in supply, but Autonomous Systems were considered more easily replaceable.

– *Impact of ROE.*[37] Blue noted clearly in both Vignette 4 and 5 that the more constrained ROE – designed to reflect possible future constraints on the use of force in densely populated urban areas – did affect their planning, most notably in their employment of indirect fires. In both cases the availability of Robotic and Autonomous Systems clearly provided alternative means to achieving effects that might otherwise have been achieved by indirect fires.
– *Autonomy, C2 and Responsibility.* The more pervasive use of autonomous systems by both blue and red during later vignettes highlighted several factors that were critical in driving the need for the integration of autonomy into decision making, however this did not abdicate responsibility

37 Here 'ROE' is used as shorthand for a combination of rules of engagement and 'special instructions' (SPINS) which were created for the purposes of this wargame experiment. Special thanks to Duncan Blake, who applied his considerable expertise in drawing up the ROE and SPINS, and to several experts who were canvassed for their expertise for their opinions on the likely normative constraints on future urban warfare.

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for autonomous actions. The intense levels of informational and cognitive demand, the contested communication and information environment, and the speed and intensity of interrelated actions within future Multi-Domain Warfare, generate a need for support to sense and decision making. The speed of response in some situations – especially against threats in the air and information/cyber domains – may require fully autonomous decisions, noting that switching to such 'modes' was a human decision, and therefore responsibility was still felt by the players to resided within the command chain. Likewise, the likelihood of having to operate in future in highly contested communications environments highlights the value of systems which can continue their missions autonomously when communications are interrupted. This debate requires further exploration, as it will have a significant impact on future C2 structures, multi-domain capability integration.

– *Truth and Trust*. A key factor in the employment of Artificial Intelligence and Autonomous Systems was the ability, or otherwise, to trust that system to execute a task critical to the operational plan. This occurred not in the traditional surveillance and command systems supported by Artificial Intelligence but in offensive and defensive weapon systems that would normally have a human within the loop. This produced a series of fundamental ethical and operational concerns for both planners and operators around the trust, or otherwise, for both planners and operators in Artificial Intelligence enabled Autonomous Systems. Similarities were drawn with automated defensive suites used by Maritime assets, which are autonomous and within which the ship, or other unit, have no choice but to trust. That trust has been established over many years of testing and operational use and was not ever present when those systems first entered service.
– *Philosophical and Manoeuverist Approach*. All vignettes in the wargame highlighted the complex interrelationship between the current domains in the future operating environment. The pervasive information- and ISR -saturated environment drives a need to consider how to apply a manoeuverist approach that is as much about information manoeuvre and exploitation as it is with the physical. There were clear indications from Blue force that Robotic and Autonomous Systems might provide manoeuverist options by offering the means to concentrate temporally and spatially. It is less clear, but deserving of further research, of how the psychological paralysis induced in this manner might then be exploited tactically/kinetically or politically.
– *Combat Service Support.* The use of Robotic and Autonomous systems for resupply and casualty evacuation appeared to hold considerable promise, but there was some indication of reluctance to rely on a machine for the latter. The balance between the perceived obligation to have a human

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providing care versus the risk reduction of autonomy offers a promising area for ethical experimentation.

– *Artificial Intelligence and Machine Learning.* The advent of Artificial Intelligence/Machine Learning and Robotics will change the traditional relationship between the human, as authority, and the machine, as agent. Individuals will continue to exercise authority and control but will need to do so in a way that is able to maximise the advantages offered by Artificial Intelligence and Machine Learning. in terms of reach and speed, changes will be necessary. These changes can be viewed through three prisms. The first concerns the position of the individual in the command chain. In the future the decision to allow a robotic platform to operate autonomously may be made at the highest level of command, far removed from the tactical environment. The second revolves around the nature of command in an autonomous, Artificial Intelligence and Machine Learning operating environment: what does it mean to exercise command over autonomous systems and how is this decided? Finally, uncertainty exists on what the triggers might be that enable autonomous systems to act, will these triggers come from individuals, or will they be driven by data and operational context? Again, the answers to this question will be both ethical and regulatory. It is important to recognise that these three prisms will be impacted upon by the actions of the adversary and their own regulation and/or ethical position.
– *Electronic and Infra-Red Signature.* A fixed Headquarters location emits a substantial electronic and infra-red signature which made it extremely vulnerable to electronic and physical attack. The Blue team made considerable efforts to mask their electronic signature through the use of city C2 systems and deployed locations but a tactical level counter electronic warfare/decoy capability would have assisted these tactics. In later vignettes, allowing systems to operate autonomously provided a means by which Blue could reduce its C2 associated electronic signature.

5 Conclusion

While analysis of the results of the initial wargame experiment and further experimentation is still underway at the time of writing this chapter, the experiment was extremely fertile in generating both questions and conclusions of relevance to furthering our understanding of the ethics of lethal autonomous weapons in future warfare. While no single set of experimentation of this kind can be considered conclusive, our preliminary results do strongly suggest that

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while military forces with a strong tradition of ethical and legal control over military action are likely to have a preference for remotely piloted and semi-autonomous systems in lower intensity conflict conditions that allow the luxury of 'human-on-the-loop' decision-making, there will nonetheless be significant operational advantage to be had from having fully autonomous weapons systems available in high intensity warfighting. Were this not the case then the debate over lethal autonomous weapons would be easy to resolve – where little meaningful operational value is likely to accrue (such as in the case of laser weapons designed to cause permanent blindness), states have little hesitation in agreeing to a ban.

Likewise, while the technological capability of autonomous systems to carry out their missions without causing undue collateral damage could not be tested in this form of experimentation, at a more general level there was significant evidence that lethal autonomous weapons could potentially be employed in place of other means of war (such as indirect artillery fires or airstrikes employing high-yield explosive weapons) in order to reduce collateral death and destruction, particularly in densely populated urban areas (which, as we have seen, are increasingly likely to be the battlefields of the future).

It is our view that any serious evaluation of the ethics of lethal autonomous weapons must seriously weigh the efficiency of such systems in achieving the ends of warfighters engaged in just conflicts (particularly given the likelihood that unjust opponents will not hesitate to do so), as well as taking seriously the potential these systems may offer to reduce collateral harm, even in such environments as densely populated urban areas. Such considerations may not, ultimately, be decisive, but to ignore or sideline them is at odds with the fundamental nature of military ethics as a negotiated compromise between the necessity and the terribleness of war.

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CHAPTER 10

Using Military Simulation Games to Promote Critical Thinking and Ethical Discussions Related to Urban Warfare

Ioanna K. Lekea

Summary

Living in a world where crises and conflicts, both on a national and international level, are not uncommon, officers' knowledge of the ethics and laws of war is crucial. This is particularly important in the case of urban warfare due to the presence of civilians during the conduct of hostilities and the imminent danger of hurting them or damaging their properties. Our chapter aims to discuss applied issues related to the development, testing, and use of war games and simulations as a tool for enhancing ethical decision making, promoting awareness and education on the ethics of urban warfare.

Keywords

urban warfare – war games – serious games – simulations – decision making – ethics of war.

1 Introduction

During urban warfare many unique ethical dilemmas are present. And not just because of the presence of a civilian population, but also because of the population density, the physical characteristics of the city, the infrastructure present, and the interrelation between those factors. Buildings, streets, and other manmade structures can pose restrictions on how military forces move and operate, and can also be used by their opponents against them. High-rise buildings can restrict communications and visibility for the military, and also hide insurgents on their roofs. Civilians who live in urban areas pose serious constraints

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on how military power can be employed; operational constraints are tailored to the specific battlefield environment in which they apply to protect civilians during combat operations and avoid civilian casualties and damage to civilian objects.

While both NATO and the EU have specific guidelines related to the conduct of warfare in urban environments to address the need for the protection of civilians, opponents may use tactics that challenge the traditional use of force, while aiming at operational success at any cost. Opponents who fail to distinguish themselves, operate intentionally among the civilian population, use human shields, or engage in activities meant to cause civilian casualties are not uncommon phenomena in urban warfare.

So, what should we do to enhance future officers' education and training on the risks that urban warfare poses to civilians? First of all, we need to focus on military personnel's education and training on the subjects of the ethics of war and International Humanitarian Law (IHL), to provide them with a solid theoretical background. However, in real life (and even more in a complicated tactical operation) rules are not easy to be applied, because dilemmas, grey zones, and ambiguity can put ethical principles and legal norms to the test. For someone who has no experience of a real battlefield, it is difficult to imagine and understand the possible ethical dilemmas of urban warfare or empathize with those who found themselves in ethically challenging situations just by studying the theoretical background. This is where war games come into play; cadets get the opportunity to participate in a virtual tactical operation, make decisions and take actions assuming responsibility for potential collateral damage. Because a merely theoretical approach won't help cadets in a future real-life emergency, we can use war games to train them on how to effectively face possible dilemmas that could arise in a real situation. But which is the most effective way to do this and what kind of war game would fit for purpose?

We believe that a war game specifically formulated to cover this educational need will effectively help with officers' training to meet real life, as it will make it possible that military personnel get critical warlike experience, before entering real battlefields and it will also provide them with the opportunity to exercise their theoretical knowledge and realize the difficulties of choosing between *right* and *wrong* during urban warfare. A war game with a realistic scenario and time frame can help those engaged in urban warfare to understand the responsibility both towards their comrades and the civilian population as well, and to also think about their possible actions in risky situations when there is no time to lose. To cut a long story short, a war game can be used as a tool for exercising on decision-making in extremis.

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2 Educating Cadets, Our Future Officers, on the Ethics of War

In non-military universities, when we discuss applied ethics, ethics of war and peace or IHL, we tend to approach these issues mainly in a rather theoretical manner with the use of scenarios, briefing, and de-briefing of case studies, but little training is performed on similar to real-life situations in a real-time frame for making decisions and taking actions. Students, typically, get a lot of bibliography to study, so as to cover the theoretical framework (and there is nothing wrong with this by itself), and, during the classes, some role-playing or case-studies analysis usually takes place. This applies even in law schools, where military lawyers study, and quite often young officers attend postgraduate classes to get a better understanding of IHL. But is this enough? Using case studies analysis to introduce ethics of war and IHL to our cadets in the past showed that, while cadets were getting a detailed discussion of issues that need a critical and case-by-case approach when it came to decision making within a strict and limited timeframe, cadets faced difficulties to assess and deal with ethically challenging situations in war.

Our opinion is, therefore, that discussing theory with scenarios is not enough for our Academy and we need to change it. And this has become the main challenge at the Hellenic Air Force Academy (HAFA). We strive to make applied ethics, truly applied, so that cadets are able to realise how difficult is to address ethical dilemmas and legal challenges in action, and how different this is from the theoretical discussions in class, however analytical they may be. Of course, we cannot take cadets to a war zone to make the lesson applied in real life. What we can do, though, is to realistically represent a war zone or crisis scenario in class, so that cadets will be able to get some virtual, but as close to real-life experience as possible.

In our academic curriculum in relation to the ethics of war and IHL, one thing is certain: we work hard to make cadets understand their responsibilities and obligations before graduation and long before a crisis or – even worse – a war comes around. Having that in mind, we seek to give our cadets the education, hands-on training, and the opportunity to cooperate and learn different approaches and interpretations related to issues of war and peace.

Given the aforementioned, in order to better educate our future officers, but also to evaluate their knowledge on ethics and IHL, we thought it was extremely important to plan, design, and develop interactive, role-playing games, tactical exercises without troops (TEWTS), simulations and even a Virtual Reality (VR) war game, so as to provide them with virtual, real-time, critical warlike experience before they enter real battlefields. Cadets will have the opportunity to exercise their theoretical knowledge and realize by themselves the difficulties

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of choosing between right and wrong. Also, they will be in a position to feel the responsibility towards their comrades, consider their options and think about their actions in risky situations when there is no time to lose. Consequently, the design of simulations and games are based on real-life scenarios, and cadets (the players) need to study the theoretical framework, i.e., the ethics of war, particularly the Just War Theory (JWT), IHL, and Rules of Engagement (RoE) before playing the game. They receive a full report of how they applied the relevant rules at the end of the game and after their choices have been evaluated.

As HAFA we want our cadets to be academically educated, but also to receive rigid military training on military ethics and law. And that makes us different from the other two Greek military academies and the philosophical and law departments in Greek universities, where the main educational approach to ethics, applied ethics, and IHL classes is the theoretical one. Of course, we could choose the mixed approach, where the theoretical background meets role-playing and case-studies analysis (either real or hypothetical cases that serve the objectives of the class curriculum or agenda). But these mainly theoretical approaches come with obvious limitations. First of all, a truly applied approach is missing, since one cannot discuss applied issues without somehow combining theory with practice (even within a virtual lab or via a virtual simulation). Second, knowing the theory does not ensure that cadets will recognize or successfully address ethical or legal dilemmas in practice. It needs experience to learn how to deal with issues in real life effectively and in cooperation with other individuals, who work towards the same objective (e.g., keeping an area secure), but from a different operational level.

Let us take a short look at some educational solutions that are or have been used in order to add an applied element to courses on military ethics and IHL:

Solution 1. War literature (poems, novels, short stories, nonfiction, and drama related to or describing dilemmas during war),[1] deontological and teleological ethics,[2] as well as utilitarian-type theories and virtue ethics[3] are currently used for cadets' ethical training because they refer to warrior ethos, conduct of hostilities or other, specific aspects of war (such as the protection of civilians). Many ideas expressed in religious and philosophical texts are now part of IHL.[4]

1 Kate McLoughlin, *The Cambridge Companion to War Writing* (Cambridge University Press 2009). Also, Jon Stallworthy, *The New Oxford Book of War Poetry* (Oxford University Press 2014).

2 Ryan Dreveskracht, Just War in International Law: An Argument for a Deontological Approach to Humanitarian Law, (2010) 16 *Buffalo Human Rights Law Review* 237–288, and William H. Shaw, *Utilitarianism and the Ethics of War* (Routledge, 2016).

3 David K. Chan, *Beyond Just War. A Virtue Ethics Approach* (Palgrave McMillan 2012).

4 Michael Walzer, *Just and Unjust Wars: a Moral Argument with Historical Illustrations*, (5th Edition, Basic Books 2015). In addition, Ioanna K. Lekea, 'Just War Theory and the conduct of

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Limitation 1. But while referring to and analysing texts may help students to generally think about the importance of taking the appropriate action and acting lawfully in war, this educational approach cannot prepare cadets to solve complex ethical problems, because a more systematic approach is needed to discuss ethics and decision making in war effectively.

Solution 2. Moral theories are also used in order to provide cadets with a useful framework and an organized context for critical reflection and discussion. For example, JWT covers a variety of topics, some related to the beginning of war (*jus ad bellum*) and some related to the conduct of hostilities (*jus in bello*).

Limitation 2. Moral theories can definitely help cadets to discuss ethical dilemmas[5] and hard choices in war, but they cannot give them answers to every possible problem that could arise in the complexity of the battlefield. An important educational element is situational training exercises (STX) that put students and cadets into officers' or their advisors' shoes and make them think about choices, advantages, and disadvantages of their actions and how to deal with them when they fail to make the right choice in relation to the tactical, operational or strategic level of war.

Solution 3. Another way of discussing and critically reflecting on ethical dilemmas and ambiguous cases is by adopting an interdisciplinary approach. Combining ethics with law, can help cadets understand the interrelation between JWT, IHL, and RoE and, also, think about the way that ethical principles and legal prerequisites are applied when it's difficult to decide between right and wrong or when the right choice is not obvious. Dilemmas in war are hardly merely ethical: in most cases, a dilemma has many aspects and the ethical and legal implications are just two parameters among others (e.g., tactical, operational) that need to be taken into account when making a decision.

Limitation 3. This educational approach is not sufficient though as both ethical theories and IHL tend to be rather general by nature;[6] there is no question that knowledge of the law is essential and the combination of ethical theories with international legislation can provide us with valuable directions on which

operations: the effect of philosophical and theological views on International Humanitarian Law' [Paper presented at the *War in Byzantium and the West Symposium*] (Hellenic Army Academy 2012), and Alexander Gillespie, *A History of the Laws of War* (Vol. 1), (Hart Publishing Ltd, 2011).

5 Marcus Schulzke, 'Ethically insoluble dilemmas in war', (2013) 12 (2) *Journal of Military Ethics* 95–110.

6 Iris Marion Young, 'The Generality of Law and the Specifics of Cases', (1995–1996) 57 *University of Pittsburgh Law Review* 549, and Timothy A.O. Endicott, 'The Generality of Law', in Luís Duarte d'Almeida, James Edwards and Andrea Dolcetti (eds.), *Reading HLA Hart's 'The Concept of Law'* (Hart Publishing 2013) 15–36.

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the operation will be based, but they can do very little with helping future officers to design and run it. Hence, while there is nothing wrong with referring to legal regulations in class in order to address a dilemma and help students learn the law, this approach is not very helpful when a real-life situation needs to be addressed; when time is limited and a large number of interdependent factors are involved, in order to decide between right or wrong (or even to choose the lesser evil in a real difficult case), theoretical knowledge works better, if it is combined with experience. It is for this reason that students and cadets must be presented with real-life cases, so that they will have to practice their knowledge and skills to overcome battlefields challenges.

Games and simulations, on the other hand, allow us to cater to these aspects in the form of a strategy as well, assuming rational players with incomplete information about each other's abilities, which is true in almost all real-life cases.[7] The application of simulations and gaming to the study of war can be of great help because they can provide us with the necessary tools for studying practical issues about the costs and benefits of a war, evaluating ethical questions on the use of force on the battlefield, especially in urban environments, where the protection of civilians is crucial. Military simulation games[8] have proven to be necessary for strategic and tactical decision-making.[9]

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7 Ioanna K. Lekea & Dimitrios G. Stamatelos, 'Using simulations and virtual reality to improve educational efficacy with a lower cost – The case of the Labs of War Games and Strength of Materials of the Hellenic Air Force Academy' (paper presented at the *International Conference on research in education and science* 2020). Also, Savvas Veziridis, Panagiotis Karampelas, Ioanna K. Lekea, 'Learn by Playing: A serious war game simulation for teaching military ethics' (Paper presented at the *Global Engineering Education Conference* 2017) 915–920. Additionally, Antonios Andreatos & Ioanna Lekea, 'Technological Evolution and Pedagogical Reapproach to Effective Learning Using Games within the Hellenic Air Force Academy. The Case Study of the Philosophy Course in the Hellenic Air Force Academy', (*Readings in Technology and Education*, Proceedings of ICICTE 2009) 799–811.

8 Dylan Schmorrow, Joseph Cohn, and Denise Nicholson, *The PSI Handbook of Virtual Environments for Training and Education. Developments for the Military and Beyond* (Volumes 1, 2, 3), (Praeger Security International/Greenwood Publishing Group 2009).

9 Ioanna K. Lekea & Dimitrios G. Stamatelos 'Our space, your space or someone else's space? Territorial objectives and military ethics in role playing games', (paper presented at *The Politics of Space and the Humanities* Conference 2017). In addition, Mark Herman, Mark Frost and Robert Kurz, *Wargaming for Leaders: Strategic Decision Making from the Battlefield to the Boardroom*, (McGraw-Hill, 2009) 11–77, as well as, Reid Hastie and Robyn M. Dawes, *Rational choice in an uncertain world: The psychology of judgement and decision making*, (Sage 2001) 47–72. Also, Ioanna K. Lekea & George K. Lekeas, 'Balancing between ethics, prevention, non-intervention and the law when mass atrocities happen: a case for Syria?', (*Annual Workshop, European Centre for the Responsibility to Protect* 2018), as well as, Lucía Martínez Ordóñez, *Military Operational Planning and Strategic Moves*, (Springer 2017) 3–10. Finally, Ioanna K. Lekea, 'Effective Leadership: using game theory to deal with

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3 Our Proposed Method: Military Simulation Games as a Near-to-Real Experience

As mentioned earlier, at HAFA we seek to provide cadets with fruitful in-depth education and realistic training long before crisis and war happen. In the case of teaching military ethics and IHL the most realistic training cadets can get is through a virtual simulation, where they will have to cooperate, decide, and be held responsible for their choices and actions. In this virtual simulation, everything will be put to the test: theoretical knowledge, different approaches, and hard choices. Cadets will need to understand ethics and IHL, discuss operational aspects and reflect on the best possible way to address a hypothetical crisis. They will also realize how stress and time limitations affect their decision-making. And they will have the opportunity to work together and test how they would cooperate in difficult situations. In our military simulation game, our cadets will have to cooperate and work with cadets from other military academies as well as students of law schools, which will help them to realise how work is done in the context of complex organizations, where different backgrounds (in terms of education, type of personnel/organizations involved: civil/military) can bring discussions and tensions on issues of ethics and justice.

Since our games and simulations have an educational purpose, our scenarios evaluate[10] the players (cadets) as far as the application of both ethical principles and legal requirements[11] are concerned; we examine the aforementioned in the three important aspects of the mission, that is to say: the achievement of operational and tactical objectives, as well as the management of inevitable hindrance in their achievement due to various obstacles that urban warfare poses. Cadets face an almost real situation in terms of story, time, and (virtual) place; they have to deal with practical issues, as well in order to accomplish their mission in line with ethical and legal obligations. This concept makes our simulations a unique educational tool that will provide a virtual environment where ethical and legal dilemmas will appear so real and imminent as they have never appeared before in a class.

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ethical dilemmas concerning the war against terrorism', (*6th Canadian Conference on Ethical Leadership* 2005).

10 Donald Ralph Lampton, James P. Bliss, and Christina S. Morris, 'Human performance measurement in virtual environments' in Kay M. Stanney Handbook of virtual environments: Design, implementation, and applications, (Erlbaum 2002) 701–720.

11 Ioanna K. Lekea, 'Training officers with simulations: an educational tool for teaching Military Ethics' (*7th Canadian Conference on Ethical Leadership* 2006).

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The various tasks that players will have to fulfill, aim at covering a range of leadership dilemmas and conflict situations. Players will have to make choices between different tactics and implementations for realizing them. Each choice has a positive or negative impact on the score, which takes into account a number of factors so that military ethics and IHL will be linked to practical and measurable parameters.

Cadets' evaluation is based on their choices, their actions within the simulated environment, but also their qualities as leaders. At the end of the simulations or war games, cadets are presented with the list of options they made and how it rated against the different factors that determined its payoff. Educators use the evaluation in a debriefing class after the end of the game.

4 Our Game: Engage in Extremis

JWT and IHL form the basis of our military simulation game. Two principles govern just war conduct: the principle of discrimination and the principle of proportionality.

The principle of discrimination defines who and what we can justly attack in a war. The principle of distinction prohibits any direct, intended attacks on non-combatants or their property; those who are not directly participating in the fighting are not to be targeted; non-combatants are excluded from direct, intentional attack and their properties must not intentionally be harmed.[12] Every measure must be taken so that non-combatants,[13] medical personnel, and equipment, either military or civilian[14] are protected from hostilities.

However, it is almost inevitable not to harm civilians during the course of a war or as an intervening force, especially when tactical operations take place in a populated area. In non-clear-cut cases, where the enemy is surrounded by civilians, and there is a possibility of harming or killing non-combatants as a result of the military operation, the principle of proportionality is used to

12 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Articles 4, 27–34. Protocol Additional to the Geneva Conventions I of 8 June 1977, Article 52.

13 Common Article 3 of the 1949 Geneva Conventions of 12 August 1949. Protocol Additional to the Geneva Conventions I of 8 June 1977, Article 48.

14 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Articles 19–21, 24–25. Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, Articles 22–35. Protocol Additional to the Geneva Conventions I of 8 June 1977, Articles 12 and 23.

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resolve issues such as how one should attack and what kind of weapons one might use in order to achieve the military objectives set without causing disproportional collateral damage,[15] e.g. civilian casualties or damage to civilian objects.

So, in order to launch a just military operation, both principles of discrimination and proportionality create the obligation for military commanders and military personnel involved in planning a specific tactical operation to think carefully about the results of the attack; civilians and their property should be protected in the best possible way. It is never permissible to harm civilians and destroy non-military targets, except when harm and destruction are accidental or not intended and proportional to the overall goal of the military operation. The logic of this would be that every effort has been taken not to harm non-combatants. The application of highly accurate weapons, the avoidance of using biological, chemical, or nuclear (BCN) weapons, or any weapon that cannot discriminate between legitimate and illegitimate targets may indicate that, if/when collateral damage happens, it is unintended.

The same principles apply in IHL for the prohibition on the use of weapons that cause excessive injuries or indiscriminate effects on the enemy.[16]

The scenario of our game is based on the principles of the JWT and IHL and is suitable to explore both ethical and legal dilemmas as part of a simulated tactical scenario of urban warfare. Cadets are presented with a scenario that involves difficult choices about how to face and eliminate the enemy in a populated area without harming the civilians (or by trying to eliminate the harmful effects of the weapons they choose to use) but also without putting the mission at risk.

Let's move into the details of our game. Its name is *Engage in extremis* and it has two parts: *Part I: Just Shots in Yemen and Part II: Holy Devils Party in Paris.* In Part I, Cadets represent States' W (White) military forces that fight against a terrorist organization operating within the territory of State B (Black). A military alliance (W-White) turns against targets within the State of Yemen (B-Black) because a terrorist group of radical Islamic ideology based in State B has launched a number of terrorists' strikes against some of the alliance's

15 Alex Obote-Odora, 'Collateral Damage: A Dangerous Omission In The Law Of Armed Conflicts' in Chile Eboe-Osuji *Protecting Humanity*, (Brill/Nijhoff 2010) 789–799, as well as, Michael Schmitt, 'State-sponsored Assassination in International and Domestic Law' (1992) 17 Yale Journal of International Law 609–685.

16 Stuart Casey-Maslen & Sharon Weill, 'The use of weapons in armed conflict' in S. Casey-Maslen *Weapons under International Human Rights Law*, (Cambridge University Press 2014) 240–281.

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member states. Military intervention is based on the notion of preventive war, as expressed by the Bush doctrine[17] and applied in the war against terrorism. Terrorists hold a space used for training new insurgents within the populated area and they have also occupied a part of the hospital (H) that serves people living in town C (located within State B). A school can be found close to the hospital. Also, within town C terrorists occupy other buildings where they make bombs, gather and analyze intelligence, but also use them as educational points for new members that they have managed to convert. These buildings (bearing no insignia) are also located within the populated area. The hospital and the rest of the suspicious buildings are connected via an urban road network. Other buildings, temples, and busy roads are in between.

The military alliance has to deal with the terrorist threat, thus engaging both steel and moving targets, so as to weaken the terrorist network. This will also prevent a terrorist attack from taking place within a populated area that attracts many tourists too within France – F – according to intelligence (*Part II of the game*). Terrorists' target is Paris Business School.

As far as the identity of the terrorists, they are members an Islamic fundamentalist political movement, and their rules of engagement are described in *Taliban, A Book of Rules* (2009).[18] Terrorists hold various positions and hide within a populated area – some of them near the hospital or a school/playgrounds. Their objective is to hold their positions following their rules of engagement and carry out the attack against State F.

Cadets within the game can choose to play the role of the military commander of the States' W Alliance or the terrorist leader. In the first case, their choices will be evaluated according to the JWT, IHL, and the RoE; if cadets choose to play the terrorist leader they will be evaluated according to the *Book of Rules*.

Players have to decide on:

- how to engage their forces on the map,
- what type(s) of weapon to use,
- which is the most appropriate way to move their forces (using deadly or non-lethal targeted force, eliminating an area using clearing teams, taking alternative courses so as to get from a starting point to their destination without having to encounter civilians),

17 Robert J. Delahunty & John Choon Yoo, 'The 'Bush Doctrine': Can Preventive War Be Justified?' (2009) 32 *Harvard Journal of Law and Public Policy* 843–865. Also, Charles W. Kegley & Gregory A. Raymond (2003) 'Preventive War and Permissive Normative Order', (2003) 4(4) *International Studies Perspectives* 385–394.

18 NEFA Foundation, *Taliban, A Book of Rules*, (NEFA Foundation Publications 2009).

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– whether and if under any circumstances the rules of engagement can be set aside, especially in situations when military forces clash with terrorists who are intentionally or not mixed up with the local population or when civilians intentionally obstruct their movement but carry no weapons,
– how to deal with ethical or legal issues such as if it should be allowed to attack steel or moving targets that are not positively identified or if one should attack the hospital despite knowing that civilians are in there too or if it is acceptable to engage on a busy road, to bomb a suspicious building within the city or near the hospital/school.

In their first mission, cadets have 45 minutes real-time to accomplice the mission. For the second mission, they only have 25 minutes.

No information is given to the players on how the local population will react to the intervening forces, as the two groups (local people and terrorists) live side by side. The expected attitude towards our troops cannot be determined in advance as friendly or hostile.

The target of the military operation for the States' Alliance (W) is defined as 'the terrorists', and terrorists use no uniforms, and their units are not stationed in defined non-populated areas, but usually mingle with civilians. We provide players with a multitude of possible means and gear, so as to make them think of various actions in order to achieve their goal, such as fighters, transport helicopters, attack helicopters, transport vehicles, infantry, special forces, tanks, UAVs, etc. On the other hand, cadets who play the role of the terrorists can use improvised explosive devices (IEDs), martyr terrorists, rocket-propelled grenades (RPGs), take hostages, or fight the Alliance's Forces on the streets. Our scenario technically supports a war game simulation that can be played by more than two players (who do not possess complete knowledge of the situation) and will have the opportunity to create alliances.

To make the simulation as realistic as possible the means provided have a cost of acquisition and a cost of use and maintenance; players have a limit as far as the total number of equipment they can acquire, i.e., they can get a total of 5 fighters for the whole game. Limits apply to both the Alliance and the terrorists (they cannot use, for example, as many martyr terrorists or IEDs they might want to, just as the Alliance cannot use an infinite number of UAVs, tanks, etc.). There is a threshold on the means and gears that can be used in the two parts of the game for each one of the opponents.

Cadets decide on how their means of choice will be used in order to achieve their goals and accomplish the mission: in line with moral theories or not. When cadets violate the principles of JWT or the rules of IHL they are given penalty points on a scale from 1 to 5; they get more points for more serious violations or bad practices. Once players make their choice, play, and finish the

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game, they will be given the analytical results and a justification about whether they broke any international treaties or not. A limited number of parameters used for cadets' evaluation (Alliance W) can be seen in Table 10.1. The assessment for the terrorists' choices is based on the Quran and the *Book of Rules*.

Since the war game simulation is addressed to future officers of the Armed Forces (Air Force, Navy, Army), our scenario has the ability to evaluate[19] the players (cadets) as far as the application of both ethical principles and laws of war[20] are concerned; we examine the aforementioned in the three important aspects of the mission, that is to say: the achievement of operational and tactical objectives, as well as the management of inevitable hindrance in their achievement due to the fog of war.

As far as the practical details of introducing the game into class are concerned, the engagement scenario is presented to the participants in the form of a short narrative at the beginning of the game.

The task that cadets are asked to fulfill aims at covering a range of conflict situations as wide as possible and giving them the opportunity to make use of almost all available weapons. Cadets have to make choices between different tactics and implementations for realizing them. Each choice has a positive or negative impact on the score taking into account a number of factors, for example, whether the weapon/method is allowed (or forbidden) by the JWT and IHL, whether civilians will be in danger or not, the number of resources it will demand and so on. Players' evaluation is based on their choices, their actions within the simulated battlefield, but also their qualities as leaders. At the end of the game, cadets are presented with the list of options they made and how it rated against the different factors that determined its payoff.

For example, if the player chooses to aim against civilians on the street, he/she does not follow the principle of discrimination as described in JWT, IHL and RoE; his/her choice also does not serve the mission, because civilians pose no threat that needs to be eliminated. As a result, the player gets penalty points for not taking into consideration the principle of discrimination. If the player chooses to strike against civilian property, he/she gets penalty points for not taking into consideration the principles of discrimination and proportionality. The weapon used is also taken under consideration as a multiplier for the

19 T.S. Hussain, S.A. Weil, T.T. Brunyé, J. Sidman, A.L. Alexander and W. Ferguson, 'Eliciting and evaluating teamwork within a multi-player game-based training environment' in Harold F. Oneil and Ray S. Perez *Computer games and team and individual learning*, (Elsevier 2008) 77–104.

20 Christian Bisson & John Luckner, 'Fun in learning: The pedagogical role of fun in adventure education' (1996) 19 (2) Journal of Experimental Education 107–112.

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TABLE 10.1 Cadet's evaluation table (alliance W)

Criterion	Gravity of the violation(1.5)	Weapon used	Principles (JWT, IHL) that were violated
Attack against a target within a populated area	– without any prior information and cross-checking 5 – with prior information (informer/spy), but without cross-checking 4	Fighters	Discrimination, Proportionality, IHL, and RoE prohibitions
-//-	– without any prior information and cross-checking 5 – with prior information (informer/spy), but without cross-checking 4	Attack helicopters	Discrimination, Proportionality, IHL, and RoE prohibitions
-//-	– without any prior information and cross-checking 5 – with prior information (informer/spy), but without cross-checking 4	Frigates/ Submarines	Discrimination, Proportionality, IHL, and RoE prohibitions
Attack against civilians	– Civilian carries no weapon 5 – Civilian who resists by using a Molotov cocktail 0	Infantry	Discrimination, Proportionality, IHL, and RoE prohibitions
-//-	– Civilian carries no weapon 5 – Civilian who resists by using a molotov cocktail 0	Special Forces	Discrimination, Proportionality, IHL, and RoE prohibitions
Attack against suspects	– Suspect carries no weapon and poses no immediate threat 5 – Suspect carries no weapon, but poses a limited threat through resistance 3 – Suspect seems to carry a weapon and poses a limited threat through resistance 2	Infantry	Discrimination, Proportionality, IHL, and RoE prohibitions

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TABLE 10.1 Cadet's evaluation table (alliance W) (*cont.*)

Criterion	Gravity of the violation(1.5)	Weapon used	Principles (JWT, IHL) that were violated
-//-	– Suspect carries no weapon and poses no immediate threat 5 – Suspect carries no weapon, but poses a limited threat through resistance 3 – Suspect seems to carry a weapon and poses a limited threat through resistance 2	Special Forces	Discrimination, Proportionality, IHL, and RoE prohibitions
Attack against military targets	0	Fighters	-
-//-	0	Transport Helicopters	-
-//-	0	Attack Helicopters	-
-//-	0	Infantry	-
-//-	0	Special Forces	-
-//-	0	Tanks	-
-//-	0	UAVs	-
-//-	0	Frigades	-
-//-	0	Submarines	-
-//-	0	Informer	-
-//-	0	Spy	-

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penalty points (a soldier aiming against a civilian target equals to -5 x 1 points while an air strike against the very same target equals to -5 x n (n= the number of building blocks damaged or negatively affected by the strike) points because of the severity of the damage caused).

Cadets learn by play the difficulties, the risks, and the possible losses when they make moral and legal choices, but they also find out that punishment follows any immoral or illegal application of their force. This way they have to deal with a fundamental dilemma in the area of military ethics: do I accomplish the mission by cheating moral principles and the law or do I try to accomplish the mission assuming the risk to my own people and means and knowing there is a high probability of a negative or unfortunate outcome?

5 The Results of the Simulation or How the War Game Was Actually Played by the Cadets

In this section, we will investigate whether the ethics of war played any role in the means or tactics that cadets chose to use in order to keep up with their operational or territorial objectives. In other words, cadets in both simulations (Part I and Part II) had as their primary responsibility to fight against the insurgents, protect the populated areas and keep civilians safe. In parallel, we will investigate the way cadets used the available military technology, so as to make or keep their land safe and decide whether they used their power in an ethical and legal manner. So, how far were they actually willing to go?

For the majority of the players, not very far when the rules had to be obeyed, that is the truth. During the first academic year that we tested the pilot game (2016–2017), 12 groups consisting of 4 or 5 cadets ($8 \times 4 = 32$ & $4 \times 5 = 20$, 52 in total) played the game in order to test its parameters. Each group had one leader and one cadet who had to count the score, the points extracted in order to use/re-use certain weapons and means, the points extracted because they violated the rules of engagement, and the points added because they eliminated a target. 10 cadets served as moderators in total, 12 cadets took notes, photographs, and video of the live-game along with the research team. After the game was tested, 16 groups of 4 (64 in total) cadets actually played the pilot game as part of the course's examination procedure and the lecturer served as the moderator.

Let's see what happened, and the results. As far as *Part I* is concerned, cadets showed less interest in applying the rules of engagement. *Cadets that played the Alliance's military forces* (*W*) *during the testing phase* (therefore they weren't evaluated as part of the Philosophy of War course) used the air force

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to bomb steel targets (suspicious buildings) that produced heavy collateral damage (62%). They said that their choice was based on the assumption that the responsibility to protect innocent civilians lies with the terrorists because they intentionally mingle with the population. Also, they cared less about the collateral damage produced when they dealt with moving targets nearby the hospital and on busy roads (72%). The reason used to justify these tactical choices was the same as before, terrorists shouldn't have used the civilians as their shield. *Cadets that played the Alliance's military forces* (*W*) *as part of their examination procedure,* showed higher respect for the rules. 38% used air raids against steel targets and they also used means and tactics against moving targets that would minimize collateral damage (79%). In general, they considered themselves as military personnel who engaged in another State's land where civilians actually could be against them and help the terrorists by accepting them to live among their population. Therefore, cadets felt that they were on enemy land (they used the phrases: their land, their space) and that the enemy wasn't only the terrorist organization but the civilians as well. *Cadets who played the terrorists* during the testing phase also showed minimal respect to their Book of Rules (82%) giving as excuse the fact that in real life terrorists follow no rules at all, despite the fact that terrorists have their own ethical justifications of terrorism and sets of rules for their tactical operations.[21] However, during the examination, they tried to follow the rules as they probably didn't want to get a lower grade. In general, they felt that they were on their land with their people and that they had to protect their right to violent revolt. According to them, Alliance's military forces had no place there.

During *Part II* cadets that played *the Alliance's military forces* (*W*) both during the testing phase (89%), as well as during their examination (92%) were extremely cautious and didn't want to take risks in choosing tactics that could harm the civilians. Their excuse was that they played on European ground, therefore on their land and among their people. They had to protect the infrastructure, the population, and the tourists as well; higher protection was deemed necessary because 'people were against the terrorists for sure'. For this reason, they 'should take ultimate measures so as not to harm them'. *Terrorists* (*B*) on the other hand, haven't changed their mind: their right to violent revolt gave them the excuse to plant bombs in places used by students, civilians, and tourists (83% during the testing phase and 76% during the examination procedure). France and Paris were definitely not their lands, it was the

21 Ivor Primoraz, The Morality of Terrorism, (1997) 14 (3) *Journal of Applied Philosophy* 221–233, and Georg Meggle, Andreas Kemmerling and Mark Textor (eds.), *Ethics of Terrorism & Counter-Terrorism* (2004 De Gruyter) 215–224.

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enemy's land, so they had to use extreme tactics to hurt the enemy and support their ideas. Of course, according to Quran a better understanding of the rules of engagement was necessary.

Throughout our military simulation game, it appears that notions of space are related to war tensions, shape the identity of the enemies and determine the means to fight them off. The discussion of whether space should be deemed only as land or as the combination of land and people helped cadets realize their responsibilities. After the end of each game (and the interviews during the testing phase), a debriefing took place and cadets should explain their views based on JWT and IHL. On certain occasions, cadets expressed the (wrong) idea that IHL and RoE can be followed or not based on who the enemy is. 'A sneaky enemy calls for a lower ethical and legal tactical plan if we want to defeat him'. Of course, JWT, IHL, and ROE give us no excuses to mistreat the enemy, to not abide by our legal obligations, or to lower our ethical standards when we are dealing with an enemy that uses unethical practices or does not comply with the rules, ethical or legal. Commanders have the obligation to protect civilians but they also need to win the war. There is no easy answer to questions like 'how much collateral damage can we take?' or 'is it right or ethical to risk my own men in order to protect the enemy's population?'. Therefore, the use of unethical and unlawful tactics based on extreme opinions of the following type 'terrorists use illegal means to fight against States, so we have to do whatever it takes to kill them; even if we have to kill some innocent people along. Other innocents will benefit from their death, so there is an excuse for our actions'; in those cases, the negative score brought the game to an end and cadets were not able to accomplish the objective. Ultimately, cadets, who excused absolute war, a war which is unrestricted in terms of the weapons used, the territory or combatants involved, or the objectives pursued, especially one in which the accepted rules of war are disregarded, failed the exam.

6 Cadets' Evaluation of the Dilemmas Posed and the Realism of the Operations

Every year, after the Philosophy of War module, concludes and our war game is used as a part of it, appropriate questionnaires are used to test the scenario and the players' satisfaction from the scenario, the questions posed and the dilemmas they had to work out. During the previous academic year (2020–2021), 172 questionnaires were collected in total from HAFA (a trustworthy research sample covering 85% of the target population) for the first assessment of the scenario of the game, mainly completed by senior cadets (52 and

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61 in their third and fourth year of studies respectively, while the remaining 59 cadets were in their second year of studies). Our target population consisted of 11 female and 161 male cadets in total, which represents the ratio of males/to females in our Academy.

The game was also tested by senior cadets of the Hellenic Naval Academy and the Hellenic Army Academy and they gave us feedback too during the testing phase (24 additional questionnaires came from the Hellenic Naval Academy and 38 came from the Hellenic Army Academy). So, questionnaires were distributed in three different military academies (Army, Naval, and Air Force) to elicit cadets' feedback irrespectively from their training.

A briefing on the scenario and the objectives of the survey was initially held for the cadets and then they were prompted to play the war game. Then, the questionnaires were distributed in order to elicit their point of view regarding the scenario, the means provided, and the factors that influenced cadets' choices. In the following paragraphs, the results from this survey are presented and discussed.

After playing the war game, we asked the trainees to evaluate the simulation by answering specifically developed questionnaires[22] using a 5-point Likert scale to measure satisfaction with the following point scale:

- Very satisfied
- Satisfied
- Neither satisfied nor dissatisfied
- Dissatisfied
- Very dissatisfied.

In relation to the scenario used, cadets were: very satisfied (59%) as far as the details and the realities of the mission were concerned, while they also enjoyed the timeframe for completing the mission (46% of the players said they were very satisfied), the role of the moderator (53% of the players said they were very satisfied), and the dilemmas posed by the game (65% of the players said they were very satisfied) as it can be seen in Table 10.2.

Cadets from the Hellenic Military Academy (17%), the Hellenic Air Force Academy (22%), and the Hellenic Naval Academy (24%) noted that they were annoyed by the unlawful use of the Air Force against non positively identified targets in populated areas during the simulations and that, in case of intended air raids against civilian targets, the game should immediately end for those violating the RoE and the principles of the JWT. Very useful discussions

22 John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*, (SAGE 2018).

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about the reasons behind unlawful behaviour during urban warfare were held in class and real-life examples[23] were analysed to promote further elaboration.

Differences between the ideological, political, and religious background and the culture of the opponents, as well as their tactics, means, and targets were discussed in great detail. This provided the instructor not only with the chance of analysing the differences and similarities between JWT and Jihad but also with the opportunity to explain to the class the huge difference between interpreting a text (i.e. Quran) and reading it under a specific extreme approach.

In relation to the means provided, cadets were: very satisfied (56%) as far as the diversity of selection is concerned, while they also agreed that the costs of acquiring and maintaining the equipment of their choice were realistic (47% of the players said that they were very satisfied with the difficulties they had to face because of the cost they had to deal with in order to run the operation). The full responses of the cadets can be found in Table 10.3.

In relation to the factors that influenced cadets' choices, we got the following answers: moral inhibitions, the perception of serving the country, the ideal of liberty, the legal aspects of each mission, any special circumstances and the necessity of each mission, the doctrine of the country with regards to justifying war. A large percentage of the sample (84%) believes that moral and cultural factors influence their services at war –while 4% of the participants think this is not the case and a 12% did not want to answer the question (or stated they did not know).

Overall, 88% of the cadets who played the game said that it made them think of their choices and their responsibility to protect the innocent, something that happened with the theoretical approach only for 23% of the cadets.

23 UK Ministry of Defence, 'Operation Telemeter internal review: Executive summary and recommendations' (2016) <https://www.gov.uk/government/publications/operation-telemeter-internal-review> accessed 30 December 2020. Also, Inspector-General of the Australian Defence Force, 'Afghanistan Inquiry Report' (2020) Accessed online at: <https://afghanistaninquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf> accessed 30 November 2020, as well as, T. Ayres, 'Haditha: A Case Study in Response to War Crimes' in David W. Lovell *Investigating Operational Incidents in a Military Context: Law, Justice, Politics* (Brill/Nijhoff 2015).

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TABLE 10.2 War game overall satisfaction from the scenario per question category

	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied
Details and realities of the mission	59	27	9	4	1
Time of decision making	42	38	12	4	4
Time for taking action	46	40	8	4	2
Dilemmas posed by the simulation	65	17	14	2	2
Role of the moderator	53	21	19	2	5

TABLE 10.3 Overall satisfaction for the means availability and cost

	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied
Adequate means provided	56	23	17	2	2
Realistic cost of means	47	25	14	8	6

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7 Conclusion and Discussion

Cadets admitted that their understanding of the complexity of the urban warfare environment was improved with the use of the game, as well as that of the difficulties of observing the principles of JWT and IHL.

The game provided cadets with some sort of virtual experience on the battlefield and gave them the opportunity to both play and understand the role of commander (and not only that): cadets also had to make hard choices[24] with no piecemeal solutions to choose from.

Cadets had to choose the best tactics for accomplishing the mission given with the least possible losses (logistics issues), as well as the least possible consequences to their troops, civilians, and the environment (legal concerns, as well as moral and war doctrine issues). They had to think and resolve practical issues and face the consequences of their choices – as if they were responsible for their choices on a real battlefield.

During the war game, cadets were able to choose to act in an unethical and/or unlawful way and this was not accepted by the majority of their classmates. When the scenarios were under development, the research team struggled to decide whether:

- unlawful tactics or use of weapons and means should be allowed in the game and followed with penalties (anyone violating the rules would lose certain points and, if he/she constantly violates the same rules, additional points would be subtracted from their score),
- certain grave violations should immediately end the game and the player should fail (for example when he/she chooses to intentionally target civilians),
- grave violations or unlawful weapons/tactics should be banned from the game (i.e. if a cadet wanted to target a civilian, this would not be allowed and the cadet would know this from the game manual).

After many discussions and a lot of thinking and testing, we decided to run the game allowing the cadets to use their means and gears in an unethical/unlawful manner and then, set up penalties for the violations of the JWT principles, the IHL or the RoE. In grave violations, the game would end and the cadet would fail on the base of inadequate knowledge of the rules or inappropriate use of means and gears, or unlawful tactics. We chose this line over a strict prohibition of unlawful means and tactics because we wanted to see what cadets would choose to do

24 Stefano Predelli, 'Some Comments on Double Effect and Harmful Involvement', (2004) 3(1) *Journal of Military Ethics* 16–26.

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if they had the opportunity to violate JWT, IHL and RoE. And we also wanted to discuss these illegal approaches in class and analyse why they are prohibited under JWT, IHL and RoE during the debriefing.

On the educational level, our choice paid off. The majority of cadets didn't accept unethical choices and many of them pointed out that unlawful approaches don't serve the purpose of war, which is lasting peace. It was cadets who started many of the relevant conversations in class, searched on the internet for contemporary cases, read extra bibliography, also, looked into dedicated-to-this-field legal databases to find out how these unlawful approaches were treated. So, despite the fact that letting unlawful means or tactics in an educational war game may look puzzling, it really worked amazingly well.

But should everything be allowed to the discussion? Of course not. Certain actions and serious violations of JWT principles or IHL (i.e. intentionally shooting civilians, bombing religious places, indiscriminate air raids against populated places, using chemical/biological weapons) meant that the game was over for those cadets who chose to use their forces in a clearly prohibited manner. So, there were red lines in our game and, once cadets crossed them, they failed the war game test with no second chance of replaying before a period of two weeks individual study had passed. So, having penalties and negative points for unlawful use of weapons or tactics doesn't mean that every choice is excused and then just punishable on the score level. Grave violations equal to failure.

8 Future Work

Our scenario is currently further developed, so as to cover new areas and dilemmas related to military ethics. In the future, other types of operations will be also included in the game options (irregular fighting/skirmish, humanitarian intervention, pre-emptive strike, preventive war) and the use of the means provided will be further evaluated on the tactical, operational, and strategic level as well.

The schedule is to fully incorporate the game into the Philosophy of War module (once the introductory lectures are completed) and to use it as the main tool for evaluating the trainees. In order for this to happen, we have already taken the appropriate steps to define exhaustively the moral and legal framework of the game. Following that, by working closely with senior officers we have developed the scenario, we have added new maps, new difficulty levels, and extra details, so as to make the simulation even more realistic. At the

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moment we are at the final stage of coding the game in order for it to be fully digitalised and allow players to remotely access it will take about 8 months. We expect to use the game for the final year cadets in the spring term of 2022.

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Editors' Remarks

Dragan Stanar and Kristina Tonn

Modern human civilization emanates from primordial rural communities, primitive rural societies and overall, a rural habitat which seems to be the original natural environment of human species. Early humans relied on scavenging which eventually evolved into hunting and gathering; then societies transformed into pastoral and horticultural/agrarian organizations which were intrinsically rural. It was only after the industrial revolution that mankind started to shift towards urban environments *en masse.* Of course, cities have been home to people for more than five millennia now, but it wasn't before the mature stages of the industrial age that man became a predominantly urban species. After the symbolic mark of 50% percent of all humanity living in cities[1] was passed, we could no longer perceive rural environment as man's natural habitat; on the contrary, by mid-21st century more than two thirds of humanity will be living in cities.[2] Without a shadow of a doubt, modern humanity is, and will increasingly continue to be, an urban species with cities as its natural habitat. Future of mankind unquestionably lies in densely populated megalopolises.

Regardless of how our societies were structured, where and how humanity moved during history, it seems as though the devastating phenomenon of war remained our permanent shadow – always and everywhere.[3] As extended periods of peace are seldom and represent 'blank pages in history', to phrase it in a Hegelian style, it would be unwise to expect that our future will be rid of war, despite all of our noble efforts to prevent, hinder and mitigate this 'most ruthlessly amoral of all human activities'[4] and establish the Kantian ideal

1 United Nations estimation is that this happened around 2007, and that today more than 55% of global population lives in cities. Not so long ago, in 1950s, only 30% of humans lived in cities – in a historical blink of an eye, we radically changed our habitat!.

2 UN Department of Economic and Social affairs expects that more than 68% of humanity will be concentrated in cities by the year 2050. https://www.un.org/development/desa/en/news/population/2018-revision-of-world-urbanization-prospects.html.

3 All assumptions about the existence of human societies free of armed social conflicts were 'found to be unfounded'. Радомир Милашиновић, Срђан Милашиновић, *Основи теорије конфликата* (Факултет безбедности 2007) 16. Radomir Milasinovic, Srdjan Milasinovic, *Basics of Conflict Theory* (Faculty of Security 2007) 16.

4 Paul Schulte, 'Morality and War', in Yves Boyer and Julian Lindley-French (eds.) *The Oxford Handbook of War* (Oxford University Press 2012) 99.

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of perpetual peace. Even the most prominent pacifists among us seem to be aware of the truism that 'so long as there are men, there will be wars'.[5] Thinking about future wars, we cannot but wonder just how profoundly will the shift in mankind's natural habitat affect different aspects of war – what new tactical dilemmas, humanitarian issues, and potential moral pitfalls will stem from the fact that soon almost three quarters of the entire global population will be living in densely populated cities?

Urban warfare has, of course, always presented armed forces with a plethora of specific difficult challenges; we can only expect these challenges to grow more intricate, severe, demanding and morally ambiguous as technology advances, as urban infrastructure becomes more elaborate, and as urban population rapidly increases. This Volume represents a bold but very necessary attempt to provide both academics and practitioners with invaluable insights into the multifold complex dimensions of urban warfare in order to restrain violence, diminish devastation and minimize death in the most densely populated points on the planet – homes of civilization and humanity. Acclaimed and renowned authors, with diverse cultural and professional backgrounds and fields of expertise, provide unique perspectives on various aspects of urban warfare, and the relationship between city and war in general: the very nature of modern cities, tactical challenges arising from modern urban warfare, the impact of narratives in urban warfare, the ethical restrictions on military power imposed by urban theatre, ethical challenges of tactical-structural changes occurring to adapt to urban warfare, important historical lessons and precedents, modern urban sieges, the intricate relationship between necessity, proportionality, and discrimination in the context of urban warfare, ethical challenges and dilemmas brought upon by 'eviction' tactics, the use of unmanned weapon platforms in sieges, the implementation of autonomous weapons and 'killer robots' in urban environments, the place and role of simulation games in ethical education in the context of urban warfare, and many more.

In the Foreword of the Volume, titled 'Urban operations, better be prepared', Lieutenant General (retd.) Mart de Kruif introduces readers to key characteristics of urban operations that will inevitably become the dominant form of military operations in future decades. General de Kruif explains how in urban operations the terrain works in favor of those who defend, how first and second order effects are magnified, how multiple operational themes coexist at the same time in urban warfare and how new technological advances will surely

5 This pessimistic but wise conclusion is attributed to Albert Einstein, a lifelong pacifist.

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heavily impact military operations in urban settings. The former Commander of the Royal Netherlands Army, who headed the Regional Command South of the International Security Assistance Force in Afghanistan, also warns of the challenges met by armed forces in urban operations when faced with 'non-conventional opponents', and concludes that the 'mental component of military power' will be of extreme importance for future successful urban operations.

Hugo Slim's analysis of the very essence of the modern city and what it represents to humanity today wonderfully demonstrates that the city is 'quite simply, the most human environment we have'. In the chapter titled 'The City and War', Slim illustrates the birth, or 'the invention of the city', guiding readers through the ontological nature of urban settlements and their significance to mankind. Such nature and paramount importance of cities in modern human societies make them a permanent and fundamental factor in the context of war: as Slim notices, 'wars typically culminate in cities resisting or falling'. The cities are 'intrinsically strategic' in their essence, and it really seems highly unlikely that wars can bypass and avoid cities, regardless of how future commanders try. Urban warfare, unfortunately, brings about destruction of the most valuable, infrastructural, educational, economic, cultural and spiritual sites, and requires 'total humanitarianism' in our efforts to alleviate suffering and desolation in urban environments. Slim concludes that despite the high moral and human cost of urban warfare, it cannot be abolished and that it will 'remain with us for the foreseeable future' generating difficult ethical challenges.

Narratives are fundamentally important for our everyday understanding of reality and various complex phenomena that surround us. They help attribute meaning to seemingly meaningless occurrences and provide explanations and causality for things that we do not completely understand – narratives help bring 'chaos to order'. In the chapter 'One damned thing after another: Battle of narratives and urban-war chaos', Patrick Mileham examines the dynamics and impact of confronting narratives in war, more particularly in urban warfare where multiple concurrent narratives exist and, so to say, compete. Every war implies the existence of two opposed, 'binary narratives', and in all warfare, including urban warfare, our aim is to 'destroy our enemy's narrative, chapter by chapter'. But, Mileham wonders, just how many narratives there are in modern urban warfare and 'does any side have a monopoly if truth', i.e., an exclusively 'right' narrative? Finally, the author warns of implications of excessive fixation on 'The Narrative' and reminds us of the practical elusiveness of the truth, especially in the state of war in which human subjective interpretations of reality are perhaps both the most pronounced and the most dangerous.

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The chapter written by Srđan Starčević and Ilija Kajtez, titled 'Enyo's wrath: War and the Fate of the City', provides a deep and detailed discussion about the historical relationship between the phenomenon of war and the city, reaching back to the Neolithic. From Mesopotamia, India and China to the Mediterranean, ancient Greece and Rome, larger and larger settlements were being created and never did they escape or evade war. Almost like there is a 'deeper connection between war and suffering of the city', a necessary metaphysical connection represented in Greek deities such are Ares, god of war, and Enyo, the goddess of war who especially enjoyed sieges and destructions of cities, who 'exemplified the horror of destroyed cities'. Modern cities share their faith and destiny with the ancient ones – they are intrinsically included in war destruction. The authors present us with numerous historical examples of urban devastation in recent centuries in order to bring us to the conclusion that urban warfare immensely augments and amplifies the importance of moral conscience of commanders who always carry both the 'imperative of victory' and the duty to 'avoid unnecessary risk' on their shoulders. It is only through extensive and meaningful education and training that includes a deep inspection into social and humanistic sciences that armed forces can form officers with the necessary moral values and developed ethos, required for commanding in urban warfare.

Modern and future urban warfare also presents a whole set of significant challenges for military leadership, including ethical ones. Florian Demont-Biaggi critically examines the 'strongest gang model' which aims to transform, *inter alia,* 'military tactics, command mindset, the use of technology and training' in order to better adapt to urban warfare. This model advises 'small, fast expert units, which operate independently', and which are envisioned to be more efficient and effective in urban warfare circumstances. Such approach places greater responsibility, especially moral, on small-team leaders, as there is an evident 'shift in command structure from command and control to mission command' which makes lower-level decision making more important than ever. Ethical issues arising from mission command are particularly highlighted by the intricacies and complexity of urban operations. In his studious analysis titled 'Virtues for the Smallest Gang? A Contribution to the Leadership Ethics of Urban Warfare', the author recognizes the specific demands of ethical military leadership and leader-virtues in the context of tactical level leadership in urban warfare, and raises the issue of perils of 'too much autonomy' given 'too early' to the 'smallest gang leaders'. The smallest gang model, admittedly innovative and 'a good idea' for urban warfare, can only be successfully implemented after serious and substantial deliberation and scrutinization

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of its ethical and moral demands on military leadership which must then be addressed in military training.

A somewhat different perspective of intricacies of urban warfare is added to the Volume by Hans-Peter Kriemann, who reflects on some practical issues of urban clashes which occurred during the conflict in Kosovo. 'The Kosovo Conflict as a Milestone in International Intervention Practice' represents a chapter which is perhaps more focused on matters of dynamics between political decision making and military action, evaluated through the lens of the NATO intervention in Yugoslavia in 1999. Nevertheless, implications and repercussions of the bombing campaign were also inevitably reflected in urban areas, which contributes to the argument presented by virtually all authors in the volume – namely, that war cannot avoid the city, and that urban warfare is an inherent and inseparable segment of all modern and future armed conflicts.

Nick Melgaard has focussed his research on just war theory in contemporary conflict. In his contribution to the volume, he contemplates the use of media and communication technologies as tools of, in his words, digital propaganda and therefore non-lethal weapons. In his contribution, he suggests that the ethical mores in armed conflicts have also changed and that it is therefore necessary to explore the causes of the changes and that it might be necessary to modify the ethical principles in the conflict as well. Coercion and interference come to mind. However, as the effects might not be only negative, for example the absence of physical violence, more than one ethical aspect becomes important. These are considered under the title: 'An Honest Siege: "Weaponising Honesty" and Non-Lethal Measures in Urban Operations'.

The next urban battlefield to be focused on is the seaport of Veracruz on the Gulf of Mexico. The major port city played an essential role in the American-Mexican war between the United States and Mexico raging from 1846 to 1848. Author Eric Patterson, who is officer and commander in the Air National Guard, centralizes on just-war theory in his research. In his chapter, the Battle of Veracruz serves to dwell upon certain *jus in bello* principles. U.S. General Winfield Scott knew the dangerous diseases such as malaria and yellow fever which would threaten his troops in the tropical zone with the season advancing. By analysing Scott's choices, the author sheds light on the principles of military necessity, proportionality, and discrimination and how work together to assist the commander in making decisions. It does not give away the author's conclusions to reveal that Scott launched the first ever large-scale amphibious assault conducted by US military forces and bombarded the city with artillery until surrender and occupation. The contribution helps to understand the multi-dimensionality of moral obligations which leaders have in responsibility for human lives.

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Charles Knight and Seumas Miller also look back at historical examples and more recent ones. From the Battle of Stalingrad in 1942 in World War II to the 1985 battle of Grozny and even cases such as Mosul, Raqqa and Marawi, a line is drawn. To overcome hidden defenders who are protected by walls and buildings, the attacker of an urban area is likely to use high explosive firepower resulting in massive destruction. The authors argue that weapons which force enemies to leave the urban space means lower casualties on both sides. Yet, eviction measures such as chemical weapons and fire are either banned in war or have moral challenges. So, in their contribution titled 'The Ethics of Eviction Agents Versus Bombardment in Urban War: Context for the Drone Debate' the authors examine several weapon systems in both a legal sense as well as an ethical sense. As a theoretic exercise to understand the ramifications of a weapon system, flame throwers which were used at the end of World War II are also analysed. The question at core is which weapon type causes the least suffering for combatants (on both sides), and civilians (on both sides) and is not costly in terms of destruction, yet still effective. This is the key to the authors' conclusion that some weapons potentially could 'square the circle' such as direct fire explosives and non-lethal chemical weapons. Finally, the implications for emerging technologies are drawn, particularly to autonomous weapons in an urban surrounding.

The following study is dedicated to the 2016–17 battle of Mosul, considered the toughest urban battle since World War II. The number of civilians killed alone is estimated between seven and forty thousand; almost one million people were displaced and large parts of the city were destroyed. Early on, the author Maciek Zajac stresses the culpability of the Islamic State for causing a humanitarian catastrophe by effectively taking the inhabitants of Mosul hostage. He first provides an overview of the military campaign by the Iraqi Government forces with allied militias and international forces to retake the city of Mosul in Northern Iraq from the Islamic State. Ensuing, the circumstances of the Battle of Mosul are analysed in an ethical framework. The author concludes, Mosul shows all the signs of a tragedy of a hostile siege; a dilemma situation which can certainly reoccur. To prevent another Mosul, the author proposes unmanned technologies instead of heavy bombardment as a viable, if not the best way to assault hostile cities. Semi and fully autonomous robots in warfare comply with the *jus in bello* principles and limit both military and civilian death toll, the author argues. He furthermore suggests to take the specific scenarios more into consideration when moral and legal aspects of autonomous weapons are discussed.

In the article 'Can robots save the city? Ethics, urban warfare and autonomous weapons' by Jenna Allen and Deane-Peter Baker, the authors address the

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ethics and necessity of autonomous weapons of war. Arguably one great challenge for law-abiding and ethical armed forces is that ranged weapons that are advantageous in rural warfare are less effective or even counterproductive in urban areas and could be replaced by autonomous weapons systems for fighting from a distance. The potential ability of such systems to operate within and around urban structures – rather than destroy them (urbicide) – while keeping human operators at a safe distance seems a promising tool. Autonomous weapons, however, are controversial. It is the authors' opinion that there has been a well-established normative shift towards individual rights-based morality that places a high value on the right to individual life, resulting in self-defense being seen as the only legitimate reason for states or 'belligerents' to use force. Therefore, the ethics of war, however, should not be treated as normatively 'pure'. Instead, it should be assumed that war, while terrible, is sometimes necessary to achieve just ends, and that the ethics of war should therefore be seen as a form of principled pragmatism. Allen and Baker argue that if one focuses exclusively on 'moral liability' one runs the risk of slipping into contingent pacifism. They consider that the just war tradition is not a normatively 'pure' approach to the ethics of war but has long been a negotiated compromise between the necessity of waging wars for just ends, on the one hand, and the desire to minimize the harms of war, on the other.

Experimental wargaming serves as 'a promising new tool for both the social science and wargaming communities' to 'answer broader questions about decision-making, crisis behavior and patterns of outcomes'. To this end, in March 2021, a team of researchers from UNSW Canberra, in collaboration with experts on future warfare and wargaming from North America, Europe and Australia, conducted what appears to be – based on a preliminary literature review – the world's first wargaming experiment, focusing primarily on ethics.

Analyzing the results of the first wargame experiment: Advancing our understanding of the ethics of lethal autonomous weapons are important in future warfare. The authors believe that any serious assessment of the ethics of lethal autonomous weapons must seriously weigh the effectiveness of such systems in achieving the goals of belligerents in just conflicts. While this may seem to be what we hope for, attempts to limit warfare without balancing it against other considerations often create more ethical problems than they solve in the increasingly complex landscape of contemporary warfare.

The presence of non-combatants during the conduct of hostilities and the huge risk of wounding or killing them especially in an urban environment is also the starting point for Ioanna Lekea. Particularly for the protection of civilians, military personal must be familiar with international humanitarian law and ethics. So, here approach originating from practical experience presents

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an educational tool in support of the future officers' learning process. The idea is to prepare military personnel for ethical dilemmas and legal grey zones. Introductory remarks explain why difficult situations cannot be dealt with if the learning focusses remains focused solemnly on the theoretical background. Other teaching methods are also ruled out. In a following proposition, military simulation games are presented as a near-to-real experience for cadets with more details to the game scenario and its two parts. In fact, the game has been played by cadets and the extent to which virtual experience on the battlefield could be provided to them is explored in a following part. Were the hard choices ethical or unethical, lawful or unlawful? The results of an evaluation point to a better understanding of the complexity of urban warfare and immanent difficulties which can be achieved by the simulation game.

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